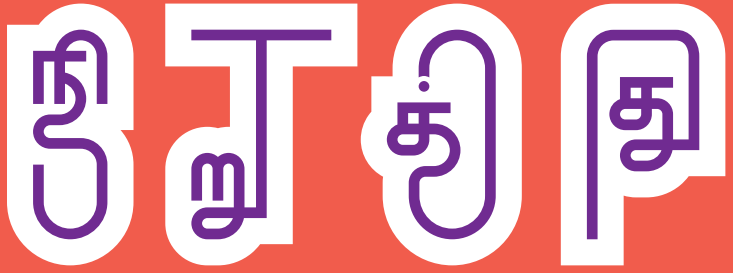
March 2014

# An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009—2014

By Yasmin Sooka, The Bar Human Rights Committee of England and Wales (BHRC) and The International Truth & Justice Project, Sri Lanka.



"You can't defend yourself against this court, all you can do is confess. Confess the first chance you get. That's the only chance you have to escape, the only one. However, even that is impossible without help from others."

The Trial, Franz Kafka

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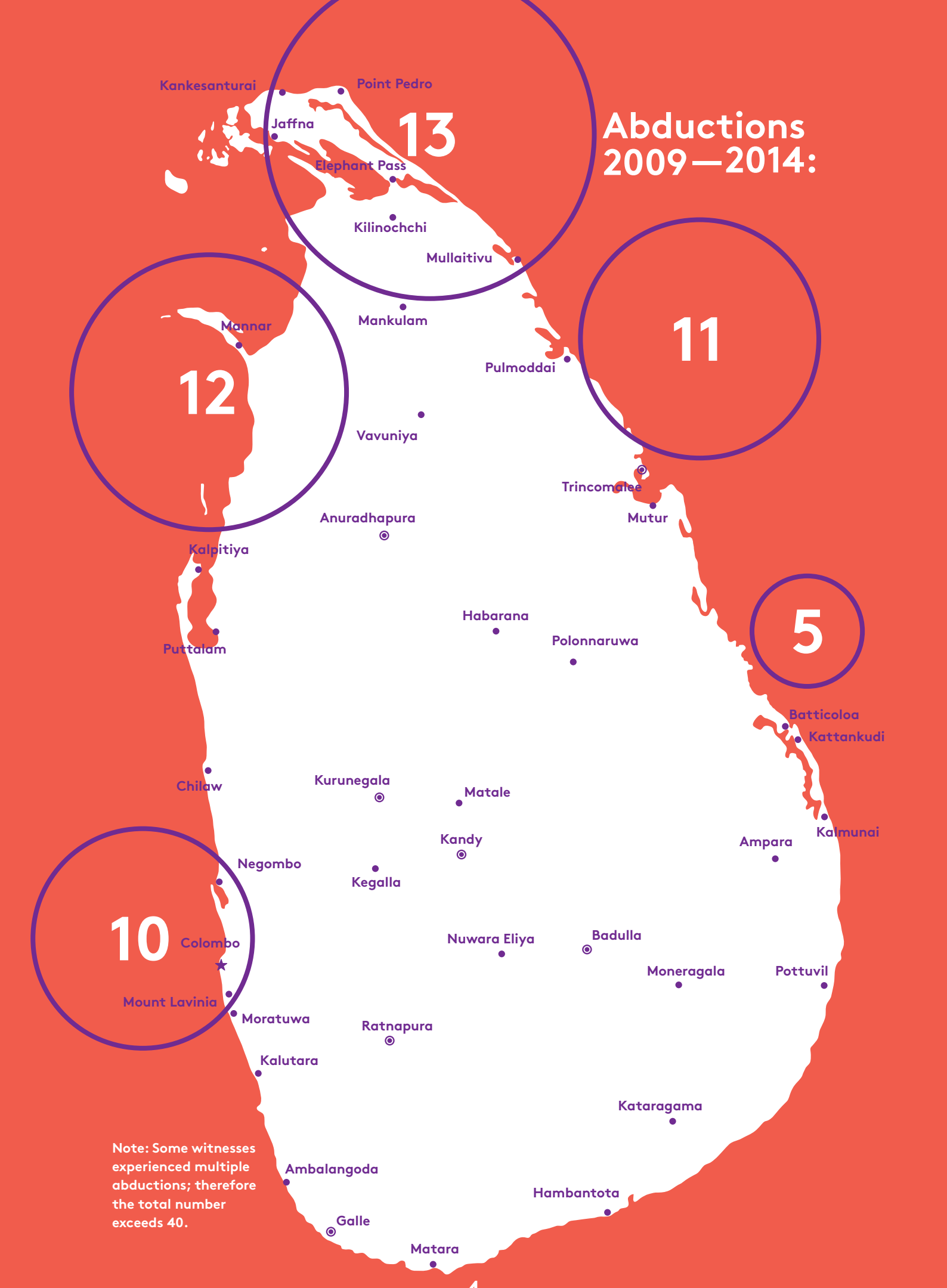



Note: Some witnesses experienced multiple abductions; therefore the total number exceeds 40.

# Foreword from Archbishop Emeritus Desmond Tutu:

The evidence presented in this report gives the lie to the Sri Lankan government's propaganda that it is reconciling with its former enemies. It shows how anyone remotely connected with the losing side in the civil war is being hunted down, tortured and raped, five years after the guns fell silent. Shockingly, more than half of the abductions in the report took place as recently as 2013-2014. The testimony collected here comes from 40 witnesses, almost all of whose families could afford to pay a bribe for their release; one wonders what happened to those whose relatives could not afford to pay and to those without relatives. The sheer viciousness and brutality of the sexual violence is staggering; as is the racist verbal abuse by the torturers and rapists in the Sri Lankan security forces. Thirty-five of these witnesses were forced to sign confessions in Sinhala; a language they do not understand. In some cases people were forced to turn informer as well as to betray innocent bystanders in order to survive and left to bear the subsequent terrible burden of guilt.

I find it horrifying that almost half the witnesses interviewed for this report attempted to kill themselves after reaching safety outside Sri Lanka. This indicates the Sri Lankan government has achieved its aim in destroying these souls, who are unlikely to regain happiness and peace in their lives. My deepest hope is that the cycle of revenge will be broken. In order for this to happen, the international community must intervene. It is imperative to pierce the skein of impunity that surrounds Sri Lanka – an island where the war is clearly not yet over.

*"The government of Sri Lanka is entitled to take measures to address any threat of a future resurgence of violence in Sri Lanka. However nothing justifies the current violations and actions taken by them. At an international law level, torture, abduction, rape and sexual violence are not permitted under any circumstances."*

**Baroness Helena Kennedy QC**

# Executive Summary

This report paints a chilling picture of the continuation of the war in Sri Lanka against ethnic Tamils, five years after the guns went silent.

**The findings are:**

- Abduction, arbitrary detention, torture, rape and sexual violence have increased in the post-war period. Targeted for these violations are LTTE suspects, or those perceived as having been connected to, or supporters of, the LTTE. The purported aim is to extract confessions and/or information about the LTTE and to punish them for any involvement with the organisation.
- These widespread and systematic violations by the Sri Lankan security forces occur in a manner that indicates a coordinated, systematic plan approved by the highest levels of government. Members of the Sri Lankan security forces are secure in the knowledge that no action will be taken against them.
- This report establises a prima facie case of post-war crimes against humanity by the Sri Lankan security forces, with respect to (a) torture and (b) rape and sexual violence.

**The report is based on:**

- 40 sworn statements from witnesses - half men and half women - who testified to their experiences of abduction, torture, rape and sexual violence by the Sri Lankan security forces.
- The abductions and torture described all occurred within the time frame of May 2009 to February 2014, i.e. post-war.
- More than half of the abductions recorded in this report took place during 2013 and 2014.
- Almost all the incidents in this report occurred from 2011 onwards.

- The witness testimony is supported by detailed medical and psychiatric records in 32 of the 40 cases, but given some have only very recently arrived in the UK this was not always available.
- The evidence of two internationally recognised experts on torture with experience in examining hundreds of Sri Lankan asylum claimants.
- In addition to the 40 statements, 57 medico-legal reports pertaining to different cases were made available by immigration lawyers (40 male and 17 female clients). All dealt with torture in the period 2006-12. Of these 28 also alleged they were raped or subjected to sexual violence by the Sri Lankan security forces.

The cases of torture, rape and sexual violence covered in this report constitute a small sample of those crimes likely to have been committed against the Tamil population in Sri Lanka. These are witnesses whose families were able to locate them, pay a bribe for their release and send them abroad to the UK. Since there is no centralised system to locate asylum seekers in the UK, there likely are more recent survivors we have not found.

Investigators were acutely aware of the risks to witnesses and their families should they be identified and have made every effort to ensure that identities be kept secret so as to prevent retaliation against extended family members still in Sri Lanka. Several witnesses were living abroad and had no idea they would be at risk if they returned home. The overwhelming majority of the witnesses were "white vanned", a term now used in Sri Lanka to denote abduction by the security forces. A quarter of the witnesses reported being abducted and tortured on more than one occasion.

Witnesses were released from detention only after their family paid bribes to members of the security force, often through intermediaries from pro-government paramilitary groups. Those who exited the country through Colombo airport also paid bribes to avoid being stopped and questioned.

The testimony demonstrated the rapes were often extremely violent, leaving the victim bleeding heavily, and often accompanied by racist insults. One woman was subjected to forced vaginal, anal and instrumental penetration (with a baton), and on one occasion forced to have oral sex simultaneously while being raped. She endured seven gang rape sessions interspersed with severe beatings. All witnesses revealed deep shame and guilt about the sexual abuse; nearly half had attempted to commit suicide after reaching the UK.

This report has immediate implications for asylum policy, donor funding and the international community as a whole. Action must be taken to bring the perpetrators to justice using the International Criminal Court and/or, an international tribunal as well as instigating national prosecutions under universal jurisdiction. Every witness who spoke to our investigators said they were recounting their ordeal in the hope that these crimes would stop and nobody else would have to suffer as they did.

# Acknowledgements

We salute the extraordinary courage of survivors of sexual abuse and torture for coming forward to testify. Every single one said they did this – not for themselves – but to save others from the same fate in Sri Lanka. Most had never recounted their experiences in such detail before and some had flash backs, trembled, wept or even had to rush to the bathroom to vomit at the memory of what they'd suffered.

This project wouldn't have been possible without the help of many dedicated people who arranged all the logistics of translators and witnesses, making sure they arrived in the right place for interviews. A special thanks goes to the army of translators who steered our lawyers through days of harrowing testimony and maintained their professionalism and poise at all times.

We are also immensely grateful to all those who assisted in finding witnesses to testify, helped reassure them, provided secure office space and went way beyond the call of duty in making this project happen. We hope that by bringing in a range of people to work on this project, they felt a little bit less alone with the human tragedies they see on a daily basis. A huge number of people volunteered their time to help in this project; their commitment and enthusiasm for such painstaking and distressing human rights work was truly heartening to see.

There are many – Sinhalese and Tamil and international legal experts - who have helped in the research for this report who cannot be named for witness protection purposes. They know they played a pivotal role, even if they get no public recognition for their contribution. Several people have acted as advisers, sharing their expertise and knowledge – if we don't credit them it's simply to protect their anonymity.

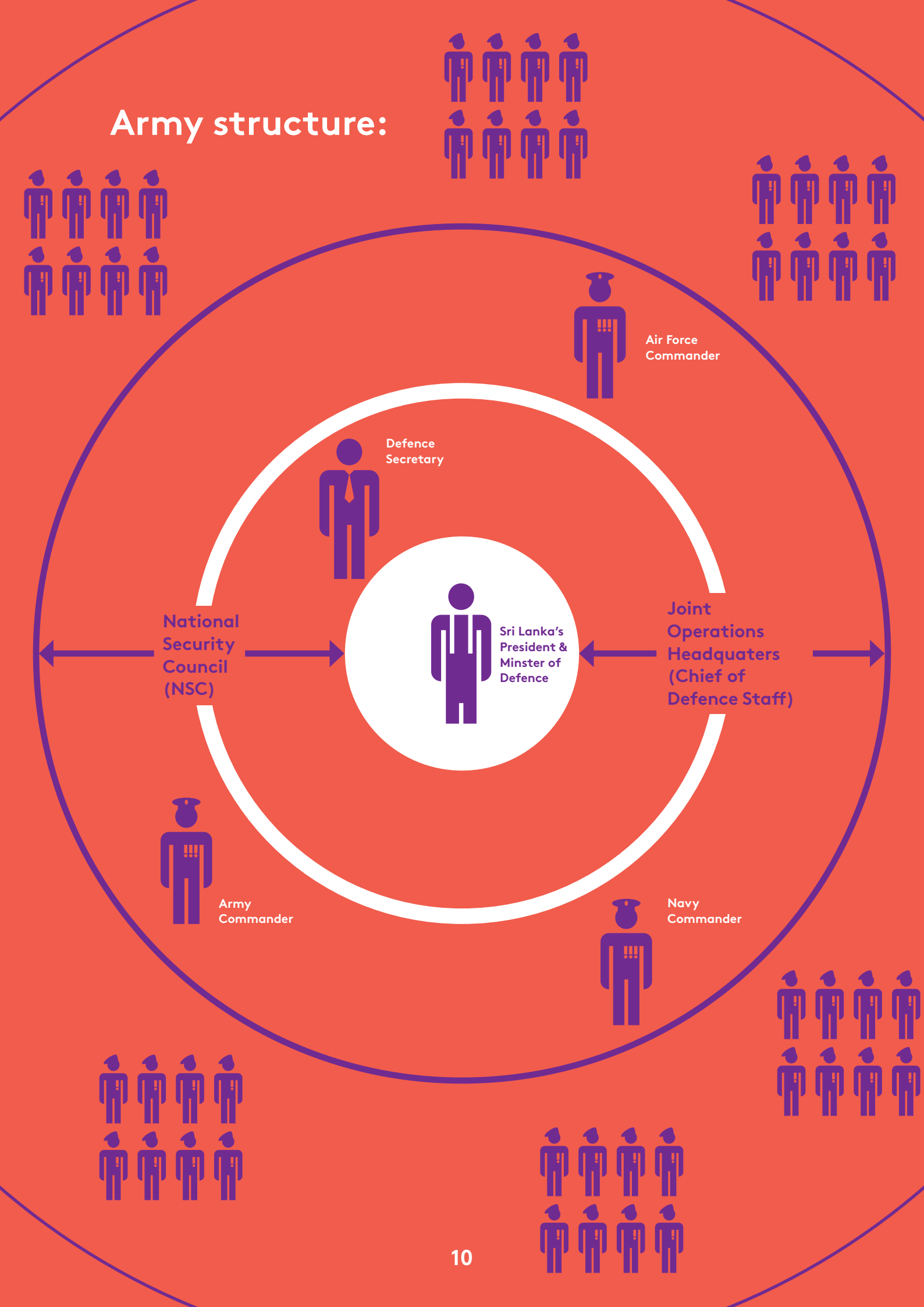
We would like to thank the investigation team, lawyers who cannot be named for the protection of the witnesses, but without whom this report could not be done. They gave unstintingly of their time and patiently and sensitively documented the testimony of the witnesses, acutely aware of the immense pain and trauma all the witnesses had experienced.

We can thank: Charu Lata Hogg who wrote the Human Rights Watch report on sexual violence in Sri Lanka and who generously gave of her time, spending many hours pointing me in the right direction, Nimmi Gowrinathan who assisted me generously with her insights and her time pointing out how women are surviving in Sri Lanka, Dr. Alison Callaway and Dr. Frank Arnold who helped us so much. Maureen Isaacson in my office has spent many days and nights with me assisting me and who unfailingly was there when I needed her. Kirsty Brimelow QC Chairwoman of the Bar Human Rights Committee (BHRC) didn't hesitate to step forward when asked for help and managed complicated arrangements with confidence and determination. She headed the International Law section of this report comprising U.K. and Australian lawyers, Dr. Theodora Christou, Adrienne Anderson and Lucy Mair. I thank them for their hard work and expertise and thank BHRC's project co-ordinator Illari Aragon.

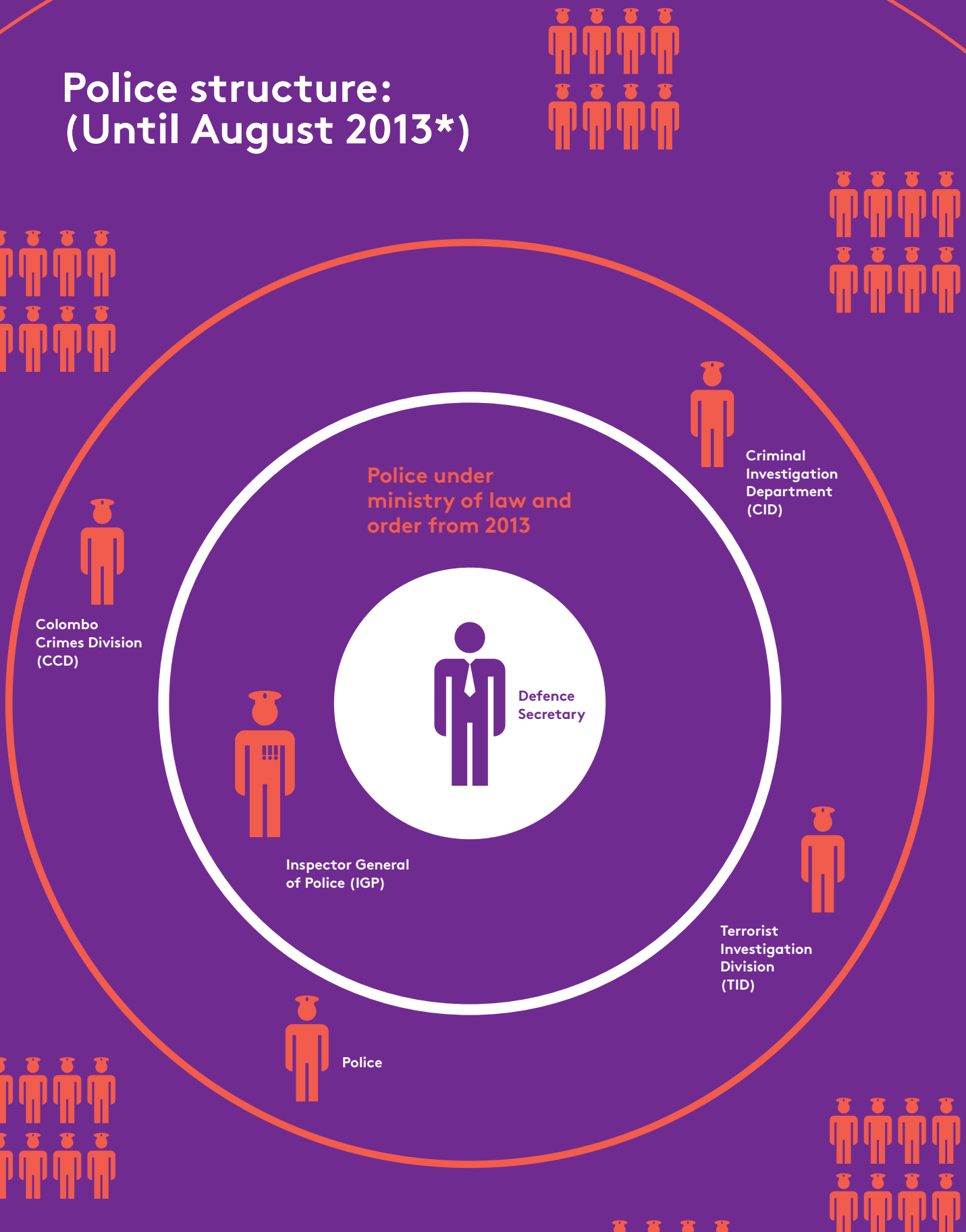
Last but definitely not least, we thank the Rausing Trust in London, which funded this project. It was Sigrid Rausing's vision that saw it getting off the ground – and at record speed too.

**Yasmin Sooka**
Johannesburg, March 2014

# Army structure:



# Police structure: (Until August 2013*)




* In August 2013 the police and Special Task Force were put under the Ministry of Law and Order.

# I. Political Context

## Impunity, not reconciliation

Five years after the end of the civil war, Sri Lanka is ruled by **a family dynasty**. President Mahinda Rakapaksa and his relatives control the executive, the judiciary and the legislature. Impunity and authoritarianism have deepened and the rule of law is dangerously undermined. Sri Lanka's independent judiciary has been systematically dismantled in the post-war period – the January 2013 impeachment of the Chief Justice, Shirani Bandaranayake is the most blatant step in this regard[1]. The police, attorney general and judiciary are all under the direct control of the President. The 18th Amendment to the Constitution, rushed through parliament in September 2010, allows the head of state to appoint the head of the Sri Lanka Human Rights Commission, compromising its independence[2]. Though long-standing emergency regulations were allowed to lapse in 2011, replacement provisions came into force. Together with the Prevention of Terrorism Act, these give sweeping powers to the security forces in peacetime.

To date there have been **no credible domestic investigations** into multiple allegations of war crimes and crimes against humanity during the final phase of the war from 2008-9[3]. These allegations include the shelling of hospitals and "no-fire zones" packed with civilians, extrajudicial executions of surrendered fighters and mass disappearances. Sri Lanka conducted its own closed-door Military Court of Inquiry into allegations of war crimes, but to date has not released its deliberations or findings. The Defence Ministry says the inquiry exonerated[4] the security forces, who had strictly adhered to the President's "zero civilian casualty directive"[5]. This of course contrasts with a growing international consensus that the civilian death toll in the final phase of the 2009 conflict in Sri Lanka was very high indeed, running into tens of thousands. During her mission to Sri Lanka on 31 August 2013 the UN High Commissioner for Human Rights, Navi Pillay, remarked that, "appointing the army to investigate itself does not inspire confidence"[6]. Sri Lanka's Lessons Learnt and Reconciliation Commission failed to address war crimes convincingly but did provide several welcome recommendations for improving Sri Lanka's human rights record. None of the key recommendations for curbing impunity and restoring rule of law has been implemented.

Furthermore, there has been **no progress on accountability** for crimes committed before 2009. In 2013 the Sri Lankan government re-opened its long dormant investigation into the 2006 execution of seventeen staff members of the French charity, *Action Contre La Faim* (ACF), in what is considered to be one of the worst single attacks on aid workers. Sri Lanka also says it

1 For a thorough analysis see: 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.

2 International Commission of Jurists (ICJ) Submission to the Universal Periodic Review of Sri Lanka, April 2012, Accessed at: http://www.sangam.org/2012/08/ICJ_UPR.pdf

3 As outlined in the Report of the Secretary General's Panel of Experts, March 2011; War Crimes in Sri Lanka, The International Crisis Group, May 2010; and also Island of Impunity, International Crimes Evidence Project (ICEP), February 2014.

4 Eg: "...the evidence presented before the Court of Inquiry does not attach blame to any Sri Lankan Army member", LLRC Observations Cleared; Army Commander Hands Over Court of Inquiry Report to Secretary Defence, MOD Website, 4 October 2013.

5 Human Rights Watch (HRW), Sri Lanka: Army Inquiry A Delaying Tactic, , February 2012.

6 Transcript of Press Conference, Sri Lanka, 31 August 2013.

has reopened the investigation into the 2006 killing of five students in Trincomalee. In both cases strong evidence implicates government forces. The French charity, ACF, condemned the government's recent efforts, saying Sri Lanka's justice system is incapable of investigating the case. It complained of "a deliberate subversion of the investigative process over the past seven years and continuous harassment of witnesses"[7]. In connection with the Trincomalee case, twelve Special Task Force suspects were arrested last year but then released on bail.

In a commitment given to UN Secretary-General Ban Ki-moon in May 2009, President Rajapaksa vowed to ensure accountability and seek a **political solution** to the conflict with Tamil Sri Lankans. The UN communiqué at the time said, "President Rajapaksa expressed his firm resolve to proceed with the implementation of the 13th Amendment"[8], which had established the recognition of the Tamil minority by accepting Sinhala and Tamil as official languages and devolved power to provincial councils. This was reaffirmed in the 2009 UNHRC Resolution drafted by Sri Lanka[9]. Five years later the commitment has not been realised. Indeed the government has made it clear it does not believe in equal status for minorities. Elections were held in 2013 to the Northern Provincial Council, whose power and resources are already limited. The President and his brothers have made it clear they oppose any council control over policing or land[10] and have to date blocked the chief minister and council members from operating effectively even within their limited mandate.

**Militarisation** of the north and east continues at unacceptably high levels, with soldiers and police engaged in the monitoring of the civilian population. The Sinhalese dominated military is effectively acting as a force of occupation in the predominately Tamil areas of the north. Tamil civilians have been forcibly registered with the police. The security forces maintain an extensive network of informers in every village creating an atmosphere of fear[11]. Furthermore the military controls virtually all aspects of life, including a large part of the economy. After her 2013 visit to Sri Lanka, Ms. Pillay noted that, "the prevalence and level of involvement of soldiers in the community seem much greater than is needed for strictly military or reconstruction purposes[12]". She said the high militarization was, "seen by many as oppressive and intrusive, with the continuing high level of surveillance of former combatants and returnees at times verging on harassment". Land-grabbing by the army for the purpose of building security camps, holiday resorts and farms, has resulted in more than two thousand legal challenges pending in the Jaffna courts[13].

A **Sinhalisation** process is underway in the north in terms of culture and demography. Sinhalese are moving into the area and the Sri Lanka Defence secretary Gotabaya Rajapaksa has said it is

7 Action against Hunger, Muttur: the truth about the assassination of 17 aid workers in Sri Lanka, December 2013.

8 Joint Statement by UN Secretary-General, Government of Sri Lanka,Department of Public Information, New York, SG/2151, 26May 2009, Accessed at: http://www.un.org/News/Press/docs/2009/sg2151.doc.htm

9 Resolution adopted by the Council at its eleventh special session S-11/1 Assistance to Sri Lanka in the promotion and protection of human rights. The Human Rights Council, Eleventh special session, 26-27 May 2009, Accessed at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Sri%20Lanka%20A-HRC-S-11-2-Advance.pdf

10 For an examination of the many challenges facing the Northern Provincial Council see: Sri Lanka's Potemkin Peace: Democracy under Fire. The International Crisis Group, Asia Report N°253, 13 November 2013.

11 International Crisis Group, Sri Lanka's North I: The Denial of Minority Rights, Asia Report N°219, 16 March 2012.

12 Transcript of Press Conference, Sri Lanka, 31 August 2013.

13 Centre for Policy Alternatives, Policy Brief: Politics, Policies and Practices with Land Acquisitions and Related Issues in the North and East of Sri Lanka, 19 November 2013.

"unnatural" for the North to be predominately Tamil[14]. Sinhalese officials are increasingly becoming the decision makers in the administration. Scores of Buddhist temples have been erected in the former conflict areas as well as war monuments glorifying the army, while street names are being changed from Tamil to Sinhala. This is a deliberate erosion of Tamil culture.

**Poverty** levels in the former conflict zone continue to be unacceptably high, notwithstanding the government's frequent references to efforts aimed at reconstruction. Some sources estimate that as many as 90,000 people still remain displaced in the north and east,[15]although precise figures are unavailable. One recent report noted children in these areas are dropping out of school due to the effects of poverty on their families, and yet this is an area where families insisted that children go to school even under bombardment during the war[16]. The UN High Commissioner described civilians in the former conflict area as, "scratching out a living among the ghosts of burned and shelled trees, ruined houses and other debris of the final battle of the war"[17]. She spoke of the "profound" and "massive" trauma of the survivors and questioned why the Sri Lankan government restricted NGOs from performing counseling work.

**Allegations of Rape and Sexual Violence** by the security forces against Tamils in the closing months of the war and continuously in the post-war period have been publicised in the international media, the UN Panel of Experts report (2011), various Freedom From Torture reports and the Human Rights Watch report on sexual violence (2013) which detailed 75 cases. In addition one Tamil mother who was gang raped has brought a court case against army officers. For a full account of the repeated allegations of sexual abuse by the security forces and the Government of Sri Lanka's response please see the Appendix.

**Freedom of expression** throughout the island continues to be severely curtailed.
The UN High Commissioner has commented on a "sustained assault" against press freedom. Threats and intimidation rather than direct violence levelled against journalists has produced collective self-censorship.

14 "If the situation was normal there would have been more and more Sinhalese in the Northern Province... When 78% of this country comprises Sinhalese how does such a vast landmass in the North become 98% Tamil. Isn't this unnatural? This was forced. Natural growth was prevented", from: "I deplore any form of extremism", Interview with Gotabaya Rajapaksa, The Daily Mirror, 4 July 2013.

15 Internal Displacement Monitoring Centre, Sri Lanka: Almost five years of peace but tens of thousands of war-displaced still without solution, February 2014.

16 Why Sri Lankan children in North Drop Out, IRIN, 7 February 2014. Accessed at: http://www.irinnews.org/report/99606/why-sri-lankan-children-in-north-drop-out

17 State-run TV is targeting Sri Lanka NGO's, say activists, Vatican Radio, 12 March 2014.

**Enforced disappearances** continue well after the end of the war. The government has established a new commission on the missing and disappeared, but the state's failure for two decades to implement the recommendations of previous commissions into disappearance[18] is not encouraging. The January 2014 hearings saw most complaints of enforced disappearance registered against the Sri Lankan military, and yet from November 2013 military personnel have been deployed to gather and register data from the families of the disappeared. This raises serious concerns about witness protection if those allegedly responsible for disappearance are also part of the inquiry process. The commission's mandate covers disappearances from 10 June 1990 to 19 May 2009 in the North East, despite the fact that people have disappeared elsewhere and much more recently.

**Protection of religious minorities** is of growing urgency in an environment of resurgent Buddhist extremism. Sri Lanka's Muslim minority, generally supportive of the government through decades of civil war, has found itself on the receiving end of repeated militant Buddhist attacks. This is a new and very dangerous phenomenon. Indications are that these attacks are tacitly supported, if not encouraged, by the government, and nobody has been prosecuted in connection with any of the scores of violent attacks on mosques and Muslim-owned businesses. There have also been scores of violent attacks on Christian churches, including three on Christmas Eve 2013[19].

In November 2013, Sri Lanka hosted the **Commonwealth Heads of Government Meeting** (CHOGM). After this event the UK Foreign office concluded that, "the human rights situation in Sri Lanka did not improve"[20]. UK media organisations reported threats made against those reporting on the island's human rights problems in the run-up to the Commonwealth meeting. Fear escalated again ahead of the UN Human Rights Council vote in Geneva, with intrepid civil society activists frightened even to say the word "Geneva" on phone or Internet calls and government-owned TV stations denouncing Sri Lankan activists who declared their support for a UN investigation into alleged war crimes[21].

18 For an account of the failure of domestic commissions to deliver justice, see: Amnesty International, Twenty Years of Make Believe, Sri Lanka's Commissions of Inquiry, June 2009.

19 National Christian Evangelical Alliance of Sri Lanka has a list of incidents, see: http://nceasl.org/category/religious-liberty/incident-reports/ as does the Secretariat for Muslims, see: http://secretariatformuslims.org/religious-unrest-continues-in-sri-lanka/

20 Foreign and Commonwealth Office, Country Updates: Sri Lanka, 31 December 2013. Accessed at: http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern /sri-lanka/quarterly-updates-sri-lanka/

21 Note to early March Rupavahini Report – cited by SL Campaign.

# II. Methodology

This report is based on 40 statements from witnesses who were recently subjected to periods of detention in Sri Lanka. These accounts contain allegations of torture, including sexual violence, by members of Sri Lanka's security forces. All the witness interviews were conducted outside of Sri Lanka. It would not have been possible to conduct this project inside the island, given the lack of effective witness protection measures there.

The detailed statements were taken by nine independent lawyers from Western and Asian countries. The majority of these lawyers have many years of experience in criminal and international litigation, and some are familiar with the Sri Lankan conflict and its aftermath. It took an average of two and a half days to complete each witness statement. Every statement was taken in a private and safe environment, with the assistance of qualified interpreters.

Witness protection was paramount throughout this project. Investigators ensured the anonymity of the witnesses and their current locations was maintained, as well as those of family members living in Sri Lanka and elsewhere. The names of witnesses and their family members, and any information that could lead to their identification, has purposefully been concealed in an attempt to minimise risks of retribution, given that the accounts contain allegations of ill-treatment and torture by members of the security forces.

Most of the torture and sexual abuse alleged by the witnesses took place as recently as 2012, 2013 and 2014, with alleged involvement of, high-ranking officers in the Army, members of the Criminal Investigation Department (CID), Terrorist Investigation Division (TID) and other members of the police force. Sworn statements were also provided by two independent international medical experts who have assessed hundreds of torture claims from Sri Lankans, and many more from other countries, and who have served as qualified experts for courts, tribunals, immigration boards and commissions of inquiry panels.

Witnesses were identified through networks of journalists, law firms, social workers, aid workers, human rights researchers and doctors. The witnesses are unknown to each other. Some witnesses have refugee status; others had asylum applications that were pending at the time of their statements.

Witnesses have permitted us to attach as exhibits to their statements, their medico-legal reports, photographs, records of interviews with government agencies, medical records and other evidence capable of corroborating their accounts. Investigators sought to secure true copies of the medico-legal reports where they existed. These documents are recognised as having the potential to provide independent corroboration of the primary account, by examination of witnesses by independent medical experts soon after the witnesses arrived in the UK. Witnesses were physically and psychologically examined to establish the degree of consistency between their presentation and their alleged account of their experiences and ill treatment in Sri Lanka, using standard internationally recognised reporting methodology, as set out in the Istanbul Protocol[22].

Naturally, it was critical that investigators did not take at face value and uncritically the accounts that were given to them, and the credibility of the accounts was carefully assessed and probed. The witnesses were asked open-ended questions about their experience in order to enable a full account to be taken, and to ensure that an account untainted by any preconceptions from an individual investigator emerged - effectively to ensure that the witness gave their account without detailed prompting and in their own words. The investigators assessed the credibility and demeanour of each witness and sought to identify inconsistencies within their statements as well as any external inconsistencies based on facts proven independently. The purpose of the investigation was also to try to ascertain if the individual case might form part of a pattern of abuse; whether it was organised, and to try to determine the methods used and why particular targets had been selected. In addition, the investigators looked for any evidence of collaboration among the witnesses.

In order to ensure the originality of the evidence examined in this report, witnesses were specifically asked whether they had provided statements to other organisations including Human Rights Watch and Freedom from Torture.

[22] The 'Istanbul Protocol' is the common short form name given to the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OHCHR, August 1999), available at: http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf (accessed 14 March 2014).

# III. Narrative

From January to March 2014, investigators working for this project conducted extensive interviews in the United Kingdom with witnesses who testified to their experiences of abduction, torture, rape and sexual violence by members of the Sri Lankan security forces in the post-war period; i.e. post early 2009 onwards. The abductions and torture occurred within the timeframe of May 2009 to February 2014 but more than half the cases occurred in the period of 2013-4. In total, we interviewed 40 witnesses - half men and half women. The testimony of the witnesses is supported by detailed medical and psychiatric records in 32 of the 40 cases, which include hospital and general practitioner records and medical-legal records (MLRs), which are medical assessments submitted to the immigration authority in support of their asylum claims.

The group comprised witnesses who escaped from Sri Lanka to the United Kingdom and whose families were able to pay bribes for their release from custody and assist their escape from Sri Lanka via the use of agents. The picture that emerged from the individual accounts was that targeting of members of this sample group by the security forces was not random, and the patterns of the use of torture, rape and sexual violence against members of this group that emerges from their accounts makes it likely, we believe, that the experiences of ill-treatment and torture described constitutes a small sample of those crimes likely to have been committed against the Tamil population in Sri Lanka.

In addition to our 40 sworn statements, an additional 57 medical legal reports were shared with us by immigration lawyers (40 male and 17 female clients). All these reports covered torture, and in at least 28 of the cases, allegations were also made against the security forces of rape. The vast majority covered the post-war period (2009-12).

### Patterns and Violations

This report reveals that the violations committed by the Sri Lankan security forces, and well documented in the background human rights literature, have continued since the war ended in 2009. Witnesses' experiences of abductions, arbitrary detention, rape and sexual violence at the hands of the Sri Lankan security forces point to patterns which confirm how widespread and systematic the violations are and that they continue well beyond the end of the war with the last known witnesses abducted in February 2014.

### Asylum Applicants

Witnesses reported going through immigration on arrival at Colombo airport, then being detained when they emerged from the airport. There is evidence that the authorities have access to database records, going back over a number of years, at the airport. Others reported being detained when they returned to their home address. If a bribe was used to secure release from detention in Sri Lanka, the likelihood is that the person may have been recorded as an 'un-acquitted' suspect. Those who accepted the bribe are responsible for ensuring the reason

for the suspect's release is recorded. A person recorded as having escaped or being missing would be of significant adverse interest to the authorities.

The Sri Lankan High Commission in London sends details of all those removed from the UK to Colombo. The CID has a 24-hour presence at Colombo airport. The airport therefore remains a major area of potential vulnerability for returning asylum seekers

UNHCR data for 2011 indicated that 75% of refugee returns under the voluntary repatriation scheme were contacted in their homes by either the military or the police for further registration. 26% of returnees were visited on more than one occasion. Every returning person to the Vanni, the mainland area of the Northern Province which was under LTTE control, is required to register his or her presence with the authorities.

Some witnesses whose previous asylum applications were unsuccessful reported being abducted upon their return to Sri Lanka by the security forces, who knew of their failed asylum applications. Once in detention, they were subsequently repeatedly tortured and sexually assaulted until, in cases documented in the study, bribes could be used to procure release and they managed to leave the country again.

There is evidence that Tamil protests in the diaspora have been monitored. In London, Sri Lankan embassy staff were observed photographing protestors. It is not known what happens to the photographs but it is probably reasonable to assume that they are sent to the relevant intelligence section of the State Intelligence Service (SIS). Research on human face detection and research is reportedly underway within the Department of Statistics and Computer Science at the University of Colombo. From a witness protection point of view, there are reasonable grounds to believe that Sri Lanka intelligence is using highly sophisticated facial recognition software to identify protesters from abroad if they return home.

### Abductions

Abductions by the Central Investigation Department (CID) and the Terrorist Investigation Division (TID) and the police are done through 'white vans'. The military are also responsible for abductions using military vehicles.

"As soon as he got me into the van he slammed the door shut. The van started to move. He tied my hands behind my back. While he was doing this, I asked him, "Who are you". He punched me hard in the back with his fists and said "Don't ask questions!". He immediately blindfolded me. It was all very quick. I was very scared and crying. It is common knowledge or belief amongst the Tamil people that Tamils abducted by the police in white vans usually disappear without trace."

Witness 1, Female

## "White Vans"

"White vanning" strikes terror into the heart of the Tamil community in Sri Lanka. It is the most common method of abduction and is part of a wider strategy that links all the security departments in their work to defend the state against perceived threats by former members of the LTTE.

The Panel of Experts (POE), appointed to advise UN Secretary-General Ban Ki-moon on accountability during the last period of the civil war in Sri Lanka, asserted in its 2011 report that "white vans" were used to abduct and often disappear critics of the Government or those suspected of links with the LTTE, and, more generally, to instil fear in the population. The POE also reported that an elite unit within the Special Task Force (STF) of the police, and directly under the command of the Defence Secretary, Gotabaya Rajapakse, was implicated in running these white van operations with those abducted removed to secret locations, interrogated and tortured in a variety of ways.

The High Commissioner for Human Rights in her report to the Human Rights Council in October 2013 recommended that the Government of Sri Lanka investigate "white van" disappearances in Colombo and other parts of the country while investigating disappearances.

The vast majority of our witnesses reported that they had been abducted by members of the CID, TID, police and the military, between 2012 and 2014. Many had returned voluntarily following the government's promises that they were welcome to resettle after the war had ended. Their detention after arriving at Colombo airport was unexpected.

White vans[23] are used largely by the Criminal Investigation Department (CID), which is able to arrest suspects in any part of the country, as well as by the Terrorist Investigation Division (TID), a counter terrorism unit. A number of witnesses reported that they had been abducted by members of military between 2011-2013, as well as by the CID and TID. Abductions by the military in different vehicles follow a similar, sinister pattern, which points to a larger thoroughly executed plan to deal with alleged suspects involving members of the security forces who are working together and clearly operating under order from superiors. This is further reinforced by many witnesses reporting that their torturers comprised members of different branches of the security forces.

## Witnesses in Rehabilitation Camps

The end of the conflict in 2009 saw the Government of Sri Lanka's determination to separate LTTE suspects from the civilian population emerging from the conflict zone. LTTE members were ordered to identify themselves on the assurance that no harm would come to them and informers assisted in pointing out those suspected of being LTTE, which led to their incarceration in "rehabilitation" centres at Maruthamadu, Welikanda, Kadakadu and Poonthottam, Nellukulam Technical College, Pampaimadu.

[23] In a few instances grey, black and green vans were used but the vast majority are actually white.

In March 2004 the LTTE's Eastern Commander, Vinayagamurthi Muralitharan, commonly known as Colonel Karuna, broke away and formed the Tamil Makkal Viduthalai Pulikal (TMVP), which included a paramilitary section. Karuna allegedly cooperated with the Sri Lankan military to fight the LTTE in the final offensive that ended the war with other disaffected Tamil groups. His forces were present at surrender sites and in the IDP camps to identify those connected to the LTTE who had not declared their membership. The security forces were also assisted by the EPDP (Eelam People's Democratic Party), a pro-government Tamil political party/paramilitary support group. These Tamil groups were granted virtually unrestricted access to Tamils detained in Manik Farm, a vast IDP camp complex in the Vavuniya area.

The Government of Sri Lanka's extensive intelligence system, shared by the security forces and immigration officials, benefited from the extensive documentation of Tamils by security forces at the end of the war. They recorded details of all IDP's such as names, locations, addresses, details of family members, including their locations and also took photographs.

Intelligence is gathered from both the Karuna faction and the EPDP as well as from former members of the LTTE recruited as informers through torture, or threats of torture or rape of their loved ones. The focus of the intelligence gathering is on the identities of former cadres, their roles and place in the command structure and hierarchy of the LTTE as well as their family connections. Witnesses interviewed by us confirm that under torture they have been forced to name and identify other LTTE cadres.  The supply of intelligence to the security forces and immigration department may extend to the Tamil Diaspora given allegations that members of the Karuna faction and embassy employees in the European Union continue to supply photographic and video evidence of Sri Lankans engaging in protest action.

Witnesses in this sample who were tortured and raped in rehabilitation camps were held between April 2009 and August 2013 and report that there was no attempt to provide rehabilitation. Officials at these camps admitted that rehabilitation was a façade. One witness detained in Polonnaruwa Rehabilitation Camp, located in the town of Mamannampitiya, reports, *"The camp was an army camp. We were supposedly trained in apprenticeship in masonry, carpentry, and musical instruments. The trainers would often supposedly be sick or on holidays. Even the army people that were there said it was bogus and only for the international community."*

# Case Study: Vasantha

The first time the soldiers raped her in the rehabilitation camp, she staggered to the toilet to wash the blood off, before returning to her tent in silence. She didn't breathe a word for shame – and fear that one of the other former Tamil Tiger rebels in the tent might be an informer.

"I did not tell the other women I'd been raped as it is not something we would discuss in our culture. I suspected the other women in my tent were also being raped but I did not ask them about it. Over the entire period I was in this rehabilitation camp none of us ever spoke about the rapes."

It's hard to imagine the loneliness and mistrust in that tent. Vasantha noticed scratch marks from fingernails on other women's faces. When they washed in the open air showers, fully clothed, she spotted the bruises on their legs. Sometimes she heard screaming from the main building where they were taken for interrogation. She watched other women being taken away at night and always returning via the toilet and she knew why.

Vasantha was a virgin until that night when two drunken Sri Lankan soldiers placed a bag sprayed with petrol over her head and then raped her. Some months later, she was taken for interrogation again. A soldier ordered her to strip naked and when she tried to fight him off, he knocked her to the ground and raped her, digging his nails into her back so hard that the scratches bled. Before Vasantha could put her skirt back on again, another man came into the room and started taking off his shirt, trousers and underwear. "He pushed me to the floor. I tried to put up a resistance but he raped me. I could smell the alcohol on his breath. I was exhausted and fainted. I cannot recall clearly what was happening but I heard doors being opened and closed and I think other people came into the room." In pain and bleeding heavily, Vasantha eventually returned to her tent, via the toilet once again.

The next time she was called for interrogation, the soldier used his cigarette butt to burn her several times on the arms and thigh, while saying something in Sinhala that she couldn't understand. Once he'd finished raping her, a second man raped her. Vasantha remembers these first two smelt strongly of cigarettes. A third man came, slapped her hard when she tried to resist, and raped her." I think there was a fourth and fifth man as well," she says, "I was in and out of consciousness by then."

Eyewitness accounts of what happened in Sri Lanka's rehabilitation camps for former rebels are only starting to emerge now, five years after the end of the war. The Sri Lankan government says they detained an estimated two thousand female combatants but treated them with love and care, helping them to see the error of their ways and teaching them new skills for life.

Vasantha was indeed taught embroidery for three months in the rehabilitation camp, but it was between the torture and rape. "It was odd," she says, "Maybe they wanted to show off to others that they were doing a good job but it wasn't even a useful skill for us."

Vasantha spent four years in various rehabilitation camps but she'd only spent four months with the Tamil Tigers and was a forced recruit too. In February 2009 as defeat loomed, six women rebel recruiters rounded her up by force, hauling her off to help the war effort against her will, along with several other young women. She lost touch with her family in the chaos of the final months.

On the last day of the war, Vasantha surrendered with a group of female rebels. On the loudspeaker she heard the warning that anyone who'd spent even one day with the Tamil Tigers must own up or they could face up to fifteen years in jail if detected later. Vasantha thought she was doing the right thing, handing herself in.

"I was very frightened and panicked. I saw lots of soldiers in green uniforms. They were very hostile and separated us from the civilians and took down our details." The first rehabilitation camp was guarded by armed soldiers in uniform and was surrounded by barbed wire with watchtowers, gun positions, sandbags and bunkers. Here there was no sexual abuse, though there was torture. Vasantha was slapped, kicked, tied up and beaten on more than one occasion.

"I began to think it would be like this. I hoped I could escape being raped. But I was wrong."

Vasantha's uncle paid a bribe to the security forces for her release from the rehabilitation camp. She didn't go home to see her mother, but immediately escaped to India. It was only after arriving in the UK that she eventually had to tell someone that she'd been raped.

"At the moment I am very depressed and lonely. I want to get better and establish myself. I want to get a job and maybe study if I get asylum."

Vasantha was rejected for asylum though. She had no lawyer and when she went for the Home Office screening interviews she was interviewed by a man

with a male translator.“ It was very hard to tell them because they were men. And they asked a lot of questions as if they didn’t believe me. It reminded me of when I was interrogated in Sri Lanka and I couldn’t cope.”

Vasantha is now in limbo while she appeals her asylum decision.“ Mostly I do nothing. I just sit at home. If I go outdoors, I get frightened especially if I hear sirens or see police in uniform.”

She thinks the sexual abuse happened to everyone in the camp.“ I spoke to you about this openly so a lot of people will come to know that this is still going on in Sri Lanka. I don’t know whether I personally will get justice but I am safe now so I should ensure it doesn’t happen to anyone else.”

There was a final blow. After coming to the UK, Vasantha discovered that her mother had been abducted.

“Sometimes I imagine a better life in the future if I get asylum, but most of the time I think ‘Why am I alive? I feel guilty. I feel my mother disappeared because of me. They wanted revenge because I escaped’.”

There’s been no news of her for many months though family members have searched.

### Targets

In our sample, the identity of witnesses was known to the abductors, who were in possession of information about them, including their home and work place address. It was clear that they had a specific target in mind as witnesses described being in the company of family or friends of a similar age group but who were not detained. Often the abductors used the witness's name before the witness identified himself or herself or produced identification. The abductions normally took place at or near their homes or workplace.

The abductors usually informed the witnesses that they were being taken away for interrogation though never told them the reason for the interrogation. An arrest warrant was not shown and the person abducted was never charged in a court of law. The abductors wore civilian clothing or camouflage and in some instances a combination of the two; sometimes they wore black trousers and shirts, they are described as clean-shaven, and sometimes have beards; sometimes they carry weapons. They were seldom present during the torture and questioning. Interviewees said that there were always more than three abductors, always men. They were Sinhalese and delivered orders in Tamil though they were not fluent in the language.

The witnesses all reported having been forcibly pushed into the back of the vehicle, and most were blindfolded, their hands tied, with rope or handcuffs. All of this suggests a pre-determined plan of action with a specific target for abduction. They were not informed of the reason for the abduction nor the destination of their journey. There was little or no communication between the abductors or targets, aside from orders and abuse.

Despite the presence of local CID, police and army camps near the places of abduction, as well as Magistrate Courts, most witnesses reported being driven to a predetermined place of detention over long distances, often over smooth and bumpy roads and sometimes over speed bumps at the end of the abduction, and having no idea where they had been taken. One witness reported, *"They were native Sinhala speakers because when they took me outside they spoke Sinhala among themselves. They pushed me in to the vehicle. They pushed me down to the floor face down. My hands were tied behind my back once I was inside the vehicle. I was blindfolded. I could hear my mother and sister were screaming. It was dark. I was screaming and saying, leave me alone. They closed the sliding door. I was in the row just behind the driver's seat. They trampled on my neck, back of my hips, and legs. I was in pain. I screamed and said I was in pain. They said they were going to kill me. I stopped screaming."*

Sinhala was spoken between the abductors and on the radio. There were often no sounds heard outside the van. The length of the journey varied, from 35 minutes without stopping to four hours or more.

### Place of Detention

The detention locations were usually in the traditional Tamil areas in the Northwest, North and Northeast of Sri Lanka - Mannar, Jaffna, and Kilinochchi. Vavuniya, PTK, Trincomalee, Batticaloa - as well as Colombo.

"They took off my blindfold and gag and untied my hands. I was alone. I could hear other women screaming in pain and I believed at first that it was a special detention centre for women. When I was moved to a second room, I started hearing men crying and screaming as well, night and day. The women screamed the Tamil word 'Amma' - or 'mother'. I could also hear other male voices that were angry and using swear words in Sinhala and there was a banging noise coming from the same direction."

Witness 25, Female

"I was in a small dark room. They left and locked me in. On the fifth day of my detention when they opened the door I heard a man screaming in Tamil asking them not to beat him. It sounded like he was in a lot of pain."

Witness 7, Male

"While I was walking along the corridor I could hear female voices moaning and coming from rooms all along the corridor. They had metal doors like my cell. I could hear women asking for water in Tamil and crying."

Witness 33, Female

"The door to where the women were kept was slightly open. I saw a female cadre lying on her back on the floor. She was totally naked. I clearly saw a soda bottle shoved inside her vagina. Her arms were spread out wide, as were her legs. The door was not open enough to see the other two girls. I could not tell if the girl or the others were alive. None of them was making any sound and the girl I saw was not moving."

Witness 18, Male

"A soldier called me into his room. He looked like he was an officer. He must have been quite high-level as he had stars on his shoulder. I can't remember how many. He also had a yellow cord hanging from his shoulder. He had a different uniform - the pockets and badges were different. His uniform was smarter. His room had a table and a cushioned chair. There was the Sri Lankan flag on the table. "

Witness 27, Male

"I was still in my nightdress and felt very uncomfortable. The man started asking questions. He asked if I was in the LTTE. I denied it. He smiled. He said that they knew everything about me and I have to confess. I did not say anything. He asked where my husband was. I said he had gone abroad. He made a sarcastic noise and said something to the other man in Sinhalese. The army man left. Then he came back with another person who was covered fully in a grey shroud with only slits for the eyes. I was very scared."

Witness 24, Female

"When I refused to help them they brought in a person with a mask on. His face was completely covered with a long piece of cloth with gaps for the eyes. I was brought in front of him and they asked him whether he knew me from the LTTE and he nodded his head. "

Witness 5, Male

## Interrogation

Witnesses reported that they remained blindfolded until they were taken into a darkened cell inside the building. They remained blindfolded when they were taken from their dark cell to and from the room where they were interrogated or subjected to torture. Almost always the blindfolds were removed during torture. They described being interrogated regularly over for long periods of time and on multiple occasions during their extended detentions. All said that they had been tortured and sexually abused during interrogation. Interrogators sometimes alternated during the course of detention.

Interrogation was almost always about LTTE involvement despite the interrogators, in many cases, being in possession of the answers and often already having the evidence to prove it. One witness said: "*I don't know why he asked me because he told me my history...He said that he knew about my previous activities and that I had been working for the LTTE. He said they were aware of my father's working for the LTTE and that my family was an LTTE family.*"

Questions in some instances were specific about whom the witness had worked with in various places, about family connections to the LTTE and their connections and they demanded names and details. What they purported to be looking for usually appeared to be a wider understanding both of the status of existing networks as well as historical events. They wanted informers. Another key motive appeared to be the punishment of those who testified before the Lessons Learned Commission or whose families reported cases to the Human Rights Commission, or those who had peacefully protested war crimes and human rights abuses from abroad.

One witness reported being hung from the rafters upside down, his nipples, testicles and penis squeezed and threatened with death if he did not admit to being LTTE. His admission did not stop the torture. He was taken down from the rafters and his head submerged in a drum of water.

Another witness was told the LTTE should not exist and that she was a slave. Torture was always part of the interrogation process. Most detainees are tortured every time they are interrogated. Indeed, almost all witnesses reported torture continuing after they had admitted their involvement with the LTTE.

The evidence of the witnesses suggested that the security forces were working together and in most instances there was more than one branch involved in the detention and torture. Given that the abductors sometimes travel to high security zones or military camps they would require inter-agency cooperation amongst the various branches of the security forces, as well as orders and clearances from superiors to enter these areas. More broadly travelling through heavily militarised areas with frequent checkpoints would also require the involvement of other units of the security forces.

## Victimology

The witnesses interviewed in this investigation were between 20 and 35 years old at the time of detention, coming mainly from the North and East of Sri Lanka, including an equal number of men and women. Some of the witnesses reported being recruited from 2003 but the majority say they were recruited between 2006 and 2008 and received very basic training.

Only a small number of this group had been involved in active combat, with the vast majority having worked as medics or aid workers or low level operatives functioning as couriers and messengers and not being involved in active combat at all. At least 10% had members of their families in the LTTE but were not personally involved. In terms of those who joined the LTTE, many of them were forcibly recruited at a very young age and most indicate that they tried to leave the LTTE before the final phase of the conflict. It is clear that witnesses in this sample posed a very low security risk.

## Perpetrators

The alleged perpetrators responsible for the torture, rape and sexual violence and cruel and inhumane treatment, extend to a broad range of Sri Lankan security organisations including the military, military intelligence, and the police with many witnesses naming the Criminal Investigation Department (CID) and Terrorism Investigation Division (TID) as key to their initial abduction. The majority were male but women did assist during interrogation and also act as guards.

The witnesses frequently described their interrogators as being “scary”, and they wore civilian clothes, camouflage or solid green uniforms. A number of high-ranking officers openly paraded their military honours and medals in torture rooms and cells. Perpetrators included both men and women.

Evidence of the release of witnesses from detention revealed involvement of members of the security forces, immigration officials at Colombo airport and EPDP members who often broker the release in exchange for payment of money.

Only one of the witnesses interviewed reported being held under either the Terrorism legislation or the Emergency Regulations. The remaining witnesses were held arbitrarily. In almost all cases there was no attempt to search their homes for evidence.

"The female officer pointed the gun at me, indicating she would pull the trigger. I became very scared and started to remove my clothes. They asked me to take them all off including my underwear. I felt completely humiliated and had no idea what might happen to me next."

Witness 4, Female

"He forcibly took my blouse off and burned me with his lit cigarette in two places, just above each breast. He put the cigarette to my one breast area first and then took the cigarette away when I pushed his hand away because of the pain. He blew on the end of the cigarette to make it burn hot and then placed it above my other breast."

Witness 1, Female

"They covered my head with a plastic bag that had been sprayed with petrol and they tightened the bag with their hands under my chin. Two people were holding me at the time and I was struggling because I couldn't breathe."

Witness 2, Male

"They lay me face down and flat on the table and held down my shoulders and arms. My hands were still bound behind my back. Then they removed my shorts. I was in my underwear only. My feet were tied together at the ankles and the third man started beating me with a plastic pipe filled with sand. He beat me on my back, the back of my legs and then my heels. When he stuck my heels it felt like an electric shock was passing through the top of my head."

Witness 7, Male

"They took me and made me perform oral sex on more than one of them, sometimes as many as three. They would pick me up at my parents' home. I didn't report it to the police because I thought they would kill me. When people have complained to the police they just inform the abusers. I did not want to make it public because it is something shameful and low grade. It was because of this abuse and the fear for my safety that I joined the LTTE. I wanted revenge for what they did to me."

Witness 10, Male
(describing first abuse, aged 16)

"It was fun for them to come and burn cigarette butts on my body. They were laughing and smiling. Their glasses contained liquid. I could see that they were drunk but I do not know what they were drinking. They would approach me as if to offer me the drink but then they would stub it out on me, burning me, with the cigarette. They never asked me anything."

Witness 10. Male
(describing abuse again, aged 23)

## Torture

Almost all witnesses were taken from their cells and brought to a separate room prepared for interrogation and torture. The cells were described as being small and without air and natural light, the floor as being cold and filthy; a bad smell of an indeterminate nature located the beginning of the breakdown process. Witnesses described hunger, thirst, fear, inadequate food and sanitation with varied ablution facilities; in almost all cases, no toilet was provided at all; instead sometimes a bag or a jar was supplied or there was a small hole in the floor.

The interrogation room was usually a larger room; a room set up for torture in most cases, furnished with a table, a chair and sometimes with benches and kitted out with the implements that were used in the torture. These included a rope or chain either suspended directly from a roof beam or attached to a pulley system to a beam or ceiling, used to raise victims from the floor. Flogging was performed with plastic pipes filled with sand or cement, iron bars, batons, cricket wickets, cable wires, stripped electric wires that were nearly always stored together in the corner of the room.

The techniques of torture cited include branding with hot metal rods, burning with lit cigarettes, lacerations, blunt trauma, suspension, falaka (beating on the soles of the feet), and electrocution, asphyxiation in water or with plastic bags over the head containing petrol or chilli powder.

## Methods of torture

Witnesses were repeatedly tortured over a prolonged period of time with a standard toolkit and array of torture tools and practices. On some occasions women officers accompanied male officers and assisted in the torture or remained present while men tortured the witnesses. Sometimes women officers played an active role in interrogation and torture, examining female witnesses, looking for "war scars", slapping, punching, kicking witnesses, bashing their heads against a wall or submerging their heads in water to the point of asphyxiation. A female witness recounts that a woman officer examined her body for war scars; another stood by when a female witness was raped by a male officer, telling her to "*cope with him*". In another instance a woman interrogator prepared the witness for a rape by a high-ranking officer and sent her to take a bath.

Physical methods included slapping and punching to the head and face; kicking to the back and legs with heavy shoes or boots; stamping on back with boots, stamping on hands and feet with boots; repeated hitting of witnesses on their backs, legs and/or the soles of their feet with plastic pipe filled with sand, sticks, batons and wires similar to plastic or rubber coated large diameter power cords while standing, laying on the floor, being placed over the table or while being suspended off the floor with their hands over their heads or upside down by the rope/chain pulley system. Many witnesses suffered repeated asphyxiation under water and under plastic bags sprayed with petrol to the point of choking or unconsciousness.

Twenty-eight of the forty detainees suffered multiple sessions of multiple deep cigarette burns on their chests or breast area, backs, arms and thighs, including inner thighs. Some of the

female detainees were burnt with hot wires on their inner thighs and one on her vaginal area. Women's genitals were touched and groped amid insults. Some of the male detainees had their testicles placed in a drawer, which was slammed shut while others had their testicles and penis squeezed hard.

Many detainees reported being forced to inhale chilli peppers - either chilli power sprinkled in a plastic bag then placed over their heads and tied around their neck or burning chilli peppers or powder, and being forced to inhale the smoke sometimes while suspended from the ceiling. This method, often used at the end of the torture, was most successful in eliciting confessions, including the signing of a written confession in Sinhalese that is not translated or the signing a blank piece of paper. The signing of this confession sometimes came earlier in the detention. Many reported continuing torture even after the confession is signed.

Several witnesses reported being branded several times and on several occasions on their bare backs with red hot branding irons, rods or knives, always resulting in loss of consciousness. All witnesses branded have permanent scarring on their bodies consistent with their accounts of torture and verified in those who have been examined by independent international recognised experts on the effects of and mechanisms of torture and scarring and dating of scarring. Scarring in some cases disappears after cigarette burns and beating with pipes filled with sand, but in most cases remains.

Some methods of torture may have been deliberately chosen so as to "leave no marks". By contrast, burning with heated metal rods (for example branding) produces the most definitive physical evidence of torture, and our examinations concentrated particularly on that form of abuse when present.

With one exception, no witness was offered medical assistance, medicine, painkillers or even proper facilities to clean their wounds during the prolonged period of detention. One witness reported that after being brutally tortured by a group of army men in a secret detention place, he thought he had finally met a sympathetic Sinhalese army officer who quietly came into his cell and gave him some painkillers. That seeming act of kindness was soon dispelled when that torturer began repeatedly to anally rape him over the course of some days. Not one detainee was offered legal assistance or brought before any court.

### Rape and sexual violence

All detainees were sexually assaulted, with many witnesses quite young and having no experience of sexual intercourse. Some detainees were mothers of babies or young children. Most detainees, male and female, were raped, confirming that they had experienced vaginal or anal penetration or both. Many were raped on more than one occasion with most sexual violence occurring in their private holding cell. Most were raped after enduring repeated physical torture in the torture chamber. Witnesses report being raped violently, usually amid verbal abuse and derision by one or two men, sometimes more. Witnesses allege that the men did not wear condoms when raping them.

A combination of torture and sexual abuse was common. A male witness reported that the men removed his clothing forcibly holding him face down on the ground while a second man hit him hard on his back with a heated metal rod several times. A young female witness described being slapped and turned over and raped by a man while a second one watched. She was uncertain of what happened after this as she lost consciousness and when she came round she was alone in the room. She was bleeding profusely from her vagina although she confirmed she was not menstruating. One female witness said she was lying down when a perpetrator tied a belt around her head so tightly that she lost consciousness. She reported registering the hatred on the perpetrator's face while he raped her. Witnesses report male perpetrators frequently urinating over them.

Many females report being roughly handled sexually, their breasts and vaginal area groped and in some cases having their anuses groped. More than one perpetrator raped many women. Many describe screaming, resisting, shouting, being overpowered, passing out, "crying myself to sleep." Many women noticed the presence of semen in or on their vaginal area once the officer or officers left the cell or upon awakening. The witnesses frequently described waking up in a room different from the one they last remember being tortured in, with no recall of the rape and no way of knowing whether they were raped by one man or more. In those cases, they knew they had been raped because of non-menstrual bleeding from their vaginas, often seminal fluid on their vaginas or thighs, and severe external and internal pain for several days in their vaginas that continued for days. One woman was subjected to vaginal rape and anal rape repeatedly and beaten with batons, heated pipes and burnt with a heated metal rod. Resistance to rape was ineffectual. Women were burnt with cigarettes on their breasts and in the vaginal area during rape. Typically the witness was made to strip, her clothing was ripped off, she was called names and mocked and subjected to painful squeezing or pulling of breasts and genitals. She might then be forced to perform oral sex on the perpetrators and then subjected to vaginal or anal rape. Some witnesses reported that fingers and other objects were inserted into their vaginas. Those women who were anally raped reported experiencing severe anal pain and difficulty in passing stools for several days after the rape.

A single male perpetrator told a witness that he would release her if she slept with him. Approaches varied; one woman testified that her breasts were fondled and kissed, another said her breasts were squeezed to the point of excruciation and she was abused by several men simultaneously, during interrogation, and beaten by a woman. One female witness reported, "I was also raped and sexually abused by the officers at the detention facility. The rape occurred at the beginning of my detention. The officer who raped me was a uniformed male officer from the Sri Lankan military. Although it was night time and the lights in the facility were dim, there was enough light for me to see that the officer was uniformed. At the time he came into my room, I was sitting on the floor. Another male officer came into the room with him, but he did not rape me. The two officers talked to each other in Sinhalese and sometimes laughed. I was forced onto my back and one the officers took down his pants and put his penis in my vagina. Both the officers were slapping me and kicking me with their feet while this was happening and talking to each other. It felt like the officer ejaculated inside me. I was bleeding from my vagina after this happened."

Many detainees were repeatedly sexually abused over varying periods of time. One female witness repeatedly gang raped was subjected to forced vaginal and anal and instrumental

penetration (with a baton) and oral sex simultaneously. She endured seven gang rape sessions interspersed with severe beatings. They experienced discharges, intense pain and burning. Many female witnesses reported that they were forced to perform oral sex, often culminating with the perpetrator ejaculating into their mouths or on their faces.

Male rape in detention is seldom reported in the media. Male witnesses describe being forced to perform fellatio on their perpetrators or on one another culminating in the perpetrator ejaculating in his mouth or on his face often accompanied by demeaning words; perpetrators raped the witnesses anally with their penises and by using objects. A report published in the Lancet in 2000, documents violations committed by the Sri Lankan security forces against ethnically Tamil males: "victims have complained of 'sticks pushed through the anus, usually with chillies rubbed on the stick first' being 'made to masturbate soldiers orally' and being 'forced with ... friends to rape each other in front of soldiers for their "entertainment", while others have complained of being anally raped by soldiers.[24]

The evidence provided by this study is consistent with a practice of rape and sexual violence that has become institutionalised and entrenched in the Sri Lankan security forces, given how widely reported it was in this cohort of witnesses, who had all been subjected to detention by the Sri Lankan security forces and then ill-treated. They continue systematically to violate both men and women because they can and because they are secure in the knowledge that they will not be held accountable for such abuses.

The evidence also clearly demonstrates that the security forces take great pains to keep the locations of white van detention places secret from the witness by blindfolding them during transport and until they are in a dark cell. Yet the abductors, those who commit the torture and sexual violence, and those who eventually release them after a bribe is paid take no steps to keep their identities secret not only from those they have abused but from those present at secret release places to pick up their family members. The only inference that can be drawn, given the widespread commission of the abductions and abuse and the interaction between the various branches of the security forces, including ranking officers, is that they commit these acts with a confidence that they will not be prosecuted or punished. The fact that the government makes light of similar allegations raised by other credible international organisations and national civil society, and no credible investigation has been commenced and no one convicted or punished, supports the confidence of the perpetrators.

One male witness forced to perform fellatio on a male officer was threatened with his life if he reported what had happened to anyone. The same perpetrator returned frequently behind a locked door to force the witness to repeat this act. Reports by witnesses of different men forcing fellatio and ejaculating in their mouths are frequent, as are the post-traumatic effects of anal penetration. One witness reported, "On separate occasions, they would come to the room when they were drunk. It was the same two men as I recognised their voices. They both raped me anally on two occasions. They raped me with their penises. They had erections. I do not know if both of them ejaculated. At least one of them ejaculated." Another witness reported, "In the following days before I was released would come in and kick me. On one occasion one of the army guards came in and urinated on me...He kicked me and left. Thought

[24] Peel, M *et al,* The Sexual Abuse of Men in Detention in Sri Lanka, *The Lancet, volume 355 issue* 2069, January 2000.

I did not suffer any more severe torture after I signed [the confession] I was often subjected to this kind of abuse. I had not been sexually abused other than by the CID officer who raped me and the army guard that made me masturbate him."

### Stigma and Shame

The stigma of sexual abuse in the Tamil community inculcates a deep sense of shame. A medico-legal report explains: "It was during our second session that M's accounts of being beaten to unconsciousness during questioning in detention, being "burnt with silver sticks", as well as with cigarettes in intimate places of her body, being subjected to rape and other forms of sexual torture, emerged. At times during this session, M was so overcome by feelings of intense shame about what had been done to her that she could only continue to talk to me by turning away from me. Although I repeatedly gave her the opportunity to have a break or discontinue telling me of these events, she determinedly carried on, saying that she wished for someone to know and to properly understand why taking her own life was the only possible option for her, if faced with deportation back to Sri Lanka."

The shame is intensified by ethnic discrimination. One female witness reported that her attempts to resist rape led to her rapist and others in the room saying, "Let me do what I want to do" and "you are a prostitute". She said, "They tortured me every day, sometimes three or four kinds of torture in one day. Sometimes they would just say, "You are Tamils, you are on the LTTE's side". They would say, "You are fighting against the army because you did the training". One female witness was forced to perform fellatio and told, "Tamil mouths are good for oral sex." In one instance a female witness was told by a female officer, "You are our slave, go and tell your whole Tamil generation that you people should never think of forming another LTTE, you people are slaves and you should remain slaves." A witness was told, 'you Tamil, you slave, if we make you pregnant we will make you abort …you are Tamil we will rape you like this, this is how you will be treated, even after an abortion you will be raped again'.

### Consequences

One male witness's medico-legal report describes his feet being tied together as he was suspended upside down, his ankles and legs beaten with batons. He sustained burns on his back and arms with hot metal rods. Branding is a form of torture that leaves profound scarring and according to the expert medical practitioners specialising in torture, is the least susceptible to misinterpretation. The witness was repeatedly forced to perform fellatio on different perpetrators, who ejaculated in his face, and he was raped. As a consequence he suffers acute anal pain and constipation, has difficulty walking long distances and is deeply depressed.

Poor appetite, inability to concentrate and attempted suicide are common symptoms of post-traumatic stress disorder suffered by victims of abuse in this report. Insomnia and the inability to escape the reality of the detention are also common; as are flashbacks, nightmares, anxiety, insomnia, withdrawal, which continue the terror. Nineteen of our sample of forty witnesses had tried to commit suicide after fleeing Sri Lanka.

While male victims of repeated rape may bear internal fissures and in some instances increased pigmentation manifests in the anal area, the scars of rape are often internalised. Witnesses of

torture and sexual abuse report changes in personality, as well as deep disturbance, which manifests in hyper-vigilance. Witnesses have to live with the mental scars and also have to cope with the physical weaknesses and injuries inflicted on them. Most believe there is no future for them; they will not have a career, a marriage, or live very long.

Two eminent and well-qualified experts[25] trained in examining victims under the Istanbul Protocol[26] have provided statements supporting this report, confirming the widespread use of torture and sexual violence in Sri Lanka. The doctors who are both trained and experienced in the forensic examination of people who state that they have suffered torture, confirm that they have examined approximately 208 Sri Lankans in the UK who suffered torture in Sri Lanka.

**Expert 1 made the following points:**

"Torture is absolutely prohibited by international law (the Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949 and the UN Convention Against Torture 1984 - 1,2). It is a crime of universal jurisdiction. The World Medical Association requires doctors to document clinical evidence of torture if and when they become aware of it, because failure to do so constitutes "tolerance" of torture and "a form of non-assistance thereof" to their patients. Doctors are also called upon to carry out forensic examinations of subjects who state that they have been tortured in relation to claims for asylum or redress."[27]

The medical experts have confirmed that their examinations of numerous Sri Lankan asylum claimants provide very strong evidence that, "torture was, and continues to be, practiced in that country."[28]

The medical experts have indicated that they have made these statements, "in the hope that it will contribute to the prevention of further torture of human beings in Sri Lanka by its security forces and other groups associated with the Government of Sri Lanka."[29]

[25] Names withheld to protect their identities.

[26] Physicians for Human Rights (PHR) co-authored the first set of international guidelines (the Istanbul Protocol) for the medical documentation of torture and its consequences in 1999.The Istanbul Protocol is the international gold standard for such evaluations and is used as the basis of the evaluation and findings.

[27] Statement of Medical Expert 1.

[28] Ibid

[29] Ibid

# Case Study: Nitharsan

Next time you go into a petrol station in England to fill up, have a good look at the person behind the till. Nitharsan, a Sri Lankan Tamil teenager worked nightshifts in a petrol station while studying management by day. His mother was killed by a shell, his father injured in the war. When the fighting ended in 2009, he was sent abroad for fear that his past would catch up with him.

Aged fourteen, Nitharsan had been secretly recruited by the Tamil Tiger rebels to do undercover work in northern Sri Lanka. As a child he could move around unsuspected, delivering parcels and messages. He didn't tell his parents. When they eventually found out, they were furious and immediately sent him away.

For years Nitharsan worked in the petrol station in London to support himself and send money home. "It was hard to study. I was always worried about my dad and my brother who were without support, but I had to attend college or they would cancel my visa."

When his father fell gravely ill last year, Nitharsan decided to return to Sri Lanka for good. It was long after the war and he thought he'd be safe. He'd seen far more important rebels released from detention, so he assumed the authorities wouldn't be interested in him. "I was homesick and I wanted to go home."

Nitharsan only survived a few days in Sri Lanka before someone betrayed him. A white van ambushed him on the way home. Blindfolded and handcuffed, he was kept face down on the back seat. He remembers a bumpy road and then a smooth one with speed bumps. He heard the driver roll down the window and speak to someone in Sinhala. The vehicle stopped and someone held his arms and walked him over grass and then a cement floor. In the background he heard people speaking Sinhala. Nitharsan's blindfold was removed, his hands freed and he was pushed into a room. There was no light bulb, no windows, no bed and no toilet. "I was very afraid and worried. I did not know what was going to happen to me. I was praying."

"Who are you really? What did you do in the UK? Why have you come back here?" the interrogators asked in broken Tamil. Nitharsan hadn't told them he'd been in the UK and he wondered how they knew.

"What did you do before you left for the UK?" they continued. Nitharsan told them he'd been studying.

A man slapped him very hard on the side of his face and said, "Tell me the truth!" Then he kicked him and punched him hard in the chest.

That night Nitharsan didn't sleep for fear. He could hear male voices screaming in Tamil. The next day he was taken to another room for interrogation. On the wall was a framed portrait of the Sri Lankan President, Mahinda Rajapaksa. The men all wore khaki coloured trousers and white shirts and there was a walkie-talkie on the table. A man with a moustache said, "You've come back to rebuild the LTTE here. You worked for them in the UK." Nitharsan protested that he'd come back to look after his sick father and had no links with the LTTE.

"If you lie to us again, I will shoot you!" the man with the moustache said.

Slapped and kicked, Nitharsan was laid face-down on a table, with two men holding his wrists and a third his ankles. Other men beat him with a plastic pipe filled with something heavy like sand. They carried on asking questions.

"I couldn't answer each question. I was screaming in pain and saying that I was telling the truth. Some of them were kicking me in the side of the ribs and punching me as well. I didn't admit being LTTE because I was very scared that if I did, they would kill me."

Someone covered Nitharsan's head in a plastic bag sprayed with petrol, tightening the bag with their hands under his chin. Two men held him as he struggled.

The next day, two different men came into Nitharasan's room, removed all his clothes and stood him against a wall. They lowered their trousers and made him bend over, all the time talking in Sinhala. "One of them was touching my penis and testicles roughly with his hands. He was squeezing and twisting for five minutes. It was very painful." The second man raped Nitharsan. Then the first one forced him to perform oral sex, ejaculating on the side of his face.

"They were using bad, derogatory words in broken Tamil and laughing at me." Nitharsan can't bring himself to repeat the swear words they used. "You Tamil dog!" is the only one he will say, as he wrings his hands nervously.

Male rape is a taboo subject in Tamil society. Nitharsan says it's even worse that there were two men involved in the attack. "To be subjected to rape in front of other people is a shameful thing. If other Tamil people come to know they will look down on me. They did this to make us ashamed."

Nitharsan hasn't told anyone in his family about the sexual abuse. "It is very lonely to keep this to myself, but if they knew they'd worry about me more."

In detention, Nitharsan eventually confessed to his past in the LTTE. That didn't stop the torture. He was burnt with cigarettes, whipped with wires and his head submerged in dirty water until he passed out, unconscious.

"It was like a punishment. Maybe because I was a Tamil person they tortured me more," he says.

After a week, two men came into his room, blindfolded him and put him in a vehicle. A relative had paid money for Nitharsan's release but he didn't know that.

"I was very frightened. I thought my life would end. I was crying, 'Don't kill me!' 'Shut up!' they said."

Back in the UK, Nitharsan's friends noticed something was wrong but he couldn't tell them. "I am very stressed now. I have nightmares. I can't concentrate properly. I am worried about my future – about my family, my sick father and my immigration status."

He says his only hope of justice is giving his statement to this project. "It was a very difficult process to give evidence but at the end I was satisfied it would be used for a good purpose. If this is investigated properly the men who did this to me might get punished."

## Release from Custody

Every witness that has been abducted by a white van reports that they had been released only after their family paid a large bribe to the security forces, most often brokered by a member of the EPDP or important well-connected persons in Sri Lanka. Almost all witnesses reported that on the day of their release, two people unknown to them entered their cells, blindfolded and handcuffed them and drove them in a vehicle to an unknown location. They were generally not told that they were being released and the vast majority assumed they had been taken out to be killed. The blindfolds and handcuffs were then removed and in almost all cases witnesses noticed that the vans releasing them were not white. Money often changed hands at this point and upon receipt of the cash the witness was released through the broker to the family. The perpetrators and the broker at no time made any attempt to conceal their identities from the witness or families.

Witnesses were encouraged by their abductors or family members to leave Sri Lanka at the earliest opportunity and to hide in the interim to prevent further abduction by the security forces. All witnesses, including those with valid visas, reported that their families paid large sums of money to agents to get them out of the country safely. The agent provided false passports and other documents to enable the witness to escape or to ensure that they could pass through the airport without questioning. In all cases where the witness escapes through the airport in Colombo, it appears that the agent (who usually accompanied the witness) chose particular immigration or passport control officers to approach and get clearance to exit and board the plane.

Witnesses report that bribery and extortion have become widespread in Sri Lanka with officials known to be notoriously corrupt. The UN Secretary General's Panel of Experts on Accountability in Sri Lanka in its report pointed out that individuals had confirmed that they were able to bribe their way out of Manik Farm and leave the country with false documentation.[30]

While all bribes described by witnesses were, by Sri Lankan standards, large, the amounts varied dramatically. There does not appear to be any correlation between what role the witness had in the LTTE or whether they had volunteered or were forcibly conscripted. The only apparent consistency is that those families, who had more, paid more. It is also apparent that the length of time spent in detention centres, is dependent on the length of time the respective family requires to find an interlocutor and come up with the required payment.

All witnesses reported that once they escaped Sri Lanka, family members left behind were visited by the security forces, usually the CID. Twenty-four of the forty witnesses reported some kind of retribution - from one or more family member being killed, a family member being severely beaten to a point of hospitalisation, a family member being disappeared, a family member being themselves abducted and detained by the security force, to at the very least being threatened with bodily harm or detention. This is clearly consistent with the fact that release on the basis of the payment of a bribe was not recorded as an 'official' release, with the consequence that Sri Lankan security forces maintained an adverse interest in the witness and their family.

[30]UN Secretary General's Panel of Experts report on Accountability in Sri Lanka.

"He blindfolded me and tied my hands behind my back. I was still in my torn clothes. I was taken out of the building and put in a vehicle. I was very frightenned as I had heard that women detained by the government were tortured and killed. The vehicle drove for a long time and when it stopped I was taken out, my blindfold was taken off and my hands untied. I saw my uncle there with another person whom I did not know."

Witness 23, Female

"I lost my asylum appeals because my first lawyer failed to get all the necessary evidence together to support my case. During my asylum interviews I was not asked the right questions and there were problems with the interpreter. I thought I would be safe and get better after leaving Sri Lanka, but being detained in the UK made my mental health worse. I tried to kill myself by slashing my arm...I've been prescribed sleeping pills but even they do not help me sleep. I still feel alone and scared about what might happen to me next."

Witness 2, Male

"I felt so embarrassed, I felt so ashamed. I took an overdose of 30-40 Paracetamol. That time there wasn't anyone at my home. My cousin had gone outside. He came home and saw some tablets on the floor. He called the ambulance."

Witness 17, Female

# IV. Findings

## Arbitrary Detention

Witnesses reported being detained without a warrant being produced, or any clear legal basis for the detention having been provided. They reported being in places of detention where they were held, in some cases for extended periods, without an ability to notify family members, or to seek legal assistance, and were not take to court or charged.

On the basis of the accounts given, the abduction and arbitrary detention of witnesses whose statements feature in this report by the Government of Sri Lanka and its agencies are a clear violation of Article 12 of the Universal Declaration of Human Rights and Articles 9; 9(1); 9(2); 9(3); 9(4); and 9(5) of the International Covenant on Civil and Political Rights (ICCPR) which contain provisions to safeguard against arbitrary detention and abuse in detention. The Government of Sri Lanka is responsible for having violated the rights of the witnesses through their arbitrary detention and deprivation of liberty as well as the abuse of their rights in detention.

Article 14 of the ICCRP provides for the right to a fair trial without delay, subject to due process. The failure to provide those detained with due process through filing charges, bringing them to trial and providing them with legal assistance and access to their family members constitutes a clear violation of their rights. The United Nations Working Group on Arbitrary Detention has stated that "the deprivation of liberty is arbitrary when the total or partial non-observance of the international norms relating to a fair trial ... is of such gravity as to give the deprivation of liberty and arbitrary character."[31]

## Torture

All of the witnesses in this report confirm that they were subjected to torture as well as cruel and inhumane and degrading treatment at the hands of the Government of Sri Lanka's security forces. Every witness without exception was also subjected to rape and sexual violence. Rape and sexual violence are also referred to as forms of torture by the Committee against Torture and the International Criminal Tribunals for the former Yugoslavia and Rwanda. The evidence gathered through this study points to the security forces of the Government of Sri Lanka having violated the rights of the witnesses through torture, rape and sexual violence, cruel and inhuman and degrading treatment.

[31] See International Law section pp. 53-57.

The ICCPR and the Convention Against Torture and other Cruel or Degrading Treatment and Punishment (Convention against Torture) both prohibit torture and cruel and inhumane treatment or punishment[32]. The ICCPR requires States to provide an effective remedy for the violation of the rights contained in it.[33] The Government of Sri Lanka is under an obligation to take steps to prevent such violations and to investigate and punish those responsible as is required by both international law and domestic law.

Furthermore Article 2 under the Convention Against Torture emphasises that no exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction and therefore torture is prohibited even in the most difficult of circumstances, such as combating organised terrorism and crime. There is thus no justification for torture, rape and sexual violence and the cruel and inhumane treatment carried out by the Government of Sri Lanka.

Witnesses released from detention report being severely injured and in need of medical attention, which they were denied by those responsible for their torture and rape. This is a clear violation of Art.1.1 of the Convention Against Torture, which requires that those responsible for the custody of a detainee who suffers injury or ill health must provide an explanation when a detainee is released from custody.

The condition in which many of the witnesses to this report found themselves and the manner in which they were released without any explanation as to the lack of due process and/or access to medical assistance gives rise to an inference that torture, rape and sexual violence is condoned and sanctioned from above.

[32] See International Law section pp 53-57.

[33] Art. 2 (3).

"They hung me upside down, three times. They tied my feet together with strings, and attached them to a hook on the roof of the interrogation room. The strings injured my feet and ankles. They then burnt dried red chilli on a rusty metal basin placed on the floor about three feet from my face. I thought I was suffocating. The irritation of my eyes was very bad. I could not breathe. On the third time I gave in and told them that I had been in the LTTE."

Witness 20, Male

"Despite the pain, I continued to refuse to sign. They tied my ankles with a rope and they used a pulley to haul me upside down from a beam on the ceiling. They lowered my head close to burning chili on the floor and the fumes were going up my nose and throat and in my eyes. I was choking badly and I could no longer breath so I told them I would sign the papers."

Witness 1, Female

"At some point towards the end of the first 10 days or so, the pain became so unbearable that I admitted to being in LTTE. They forced me to sign a paper which had Sinhalese writing on it. I do not understand Sinhalese and so I did not know what the paper said."

Witness 2, Male

"When he was carried back in to the cell by the army soldiers, they supported his arms. They put him face down onto the floor between us. He groaned in pain during the night. In the morning we realised that he had died. I knew that he was dead because I called him, and then could see and feel that he had died. He was wearing jeans and they were soaked in blood. I could see that his face was swollen from beatings and he was covered in bruises. It was clear to me that he had been killed by being tortured and beaten."

Witness 27, Male

## Rape and Sexual Violence as a form of Torture

The evidence gathered through this study points to the Government of Sri Lanka having violated the rights of the witnesses through rape and sexual violence perpetrated against them. Article 7 of the Rome Statute of the International Criminal Court (ICC), read together with the "Elements of Crimes", defines "rape" as the invasion of the body of a person by a sexual organ or other object (where invasion is meant in a broad sense so as to be gender-neutral), and"[t]he 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." Questions of consent where victims are held in detention or another coercive context are irrelevant. The ICC definition brings in the elements of the definition of rape established by the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR), which also recognised that rape may constitute torture.[34] Sexual violence is recognised as including rape, and any act of a sexual nature, which is committed on a person under circumstances that are coercive.[35]

All of the witnesses to this report provide compelling evidence of widespread rape and sexual violence perpetrated by members of the Government of Sri Lanka security forces during their detention. The rapes and sexual violence took place under coercive circumstances intended to sow fear and absolute terror for the express purpose of compelling them to make admissions that they themselves are members of the LTTE and in addition to name other members known to them. This also violates the right against self-incrimination included in ICCPR Article 14.

Torture including rape and sexual violence of persons in custody violates Sri Lanka's obligations under international human rights law. The Government has an obligation not only to prevent such violations but also to investigate the allegations of abuse and prosecute those responsible.

The Committee against Torture (CAT) raised its concern in its 2011 report that torture and ill treatment perpetrated by State actors, including both the military and police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011:

"As a matter of urgency, the Committee calls upon the State party to take immediate and effective measures to investigate all acts of torture and ill-treatment and prosecute and punish those responsible with penalties that are consistent with the gravity of their acts. It calls upon the State party to ensure that torture is not used by law enforcement personnel and members of the military. In addition to these measures, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties."[36]

[34] *Prosecutor v. Akayesu*, Case No. ICTR 96-4-T, Judgment, 688 2 September,1998.

[35] Ibid. Anto FURUNDZIJA Case IT-95-17/1-T, Judgment of 10 Dec.1998 and also Case IT-96-23 and IT-96-23/1, Dragoljub KURNARAC, Radomir KOVAC and Zoran VUKOVIC Judgment of 22 February, 2001.

[36] Committee Against Torture (CAT). Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of CAT on Sri Lanka, Forty-seventh session, CAT/C/LKA, 8 December 2011.

The Committee recalls the absolute prohibition of torture contained in article 2, paragraph 2, of the Convention, stating that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

In 2011, the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka found that "credible allegations point to a widespread practice in Sri Lanka, prior to, during and after the final stages of the war, of disappearances carried out by agents on behalf of the State, the victims of which were frequently suspected LTTE cadres, community activists, journalists or human rights defenders. Some were disappeared during the screening process. Credible allegations detail a common practice whereby such individuals were abducted and removed in white vans and never seen again." [37] The torture and rapes recorded in this report follow the same pattern of violations and are likely carried out by the same perpetrators. These may amount to a widespread or systematic attack on a civilian population, involving abductions, torture, rape and disappearances, and possibly amounting to a crime against humanity.

In terms of its Convention to end all forms of Discrimination against Women (CEDAW) obligations, women's organisations in Sri Lanka point to a failure on the part of the Government of Sri Lanka to deal with cases of sexual violence. In the *Vishwamadu* rape case, where the victim identified the perpetrators, the case has been pending before different courts since July 2010 *(Jaffna High Court Case no. 1569/12)*. The rape at issue in the case was committed in 2010 against an IDP mother when she returned from Manik farm for resettlement. The security forces in Sri Lanka are able to commit these violations with impunity in the full confidence that they are not likely to be held accountable.

There is plenty of evidence available from other reliable sources to corroborate the allegations made in this report. Since 2009, there were a number of reports, including that of the UN Secretary-General's Panel of Experts published in March 2011, documenting violations of international humanitarian law and international human rights law, as well as numerous reports published by international INGO's such as Human Rights Watch, Amnesty International and the International Crisis Group, which attest to allegations of torture, rape and sexual violence having gone unaddressed by the Government of Sri Lanka. This has created an environment of impunity, which is clearly sanctioned at the highest levels of government.

The Organisation for Economic Cooperation and Development (OECD) in its social institutions and gender index profile (SIG) has reported that, "The war in Sri Lanka has resulted in a rise in the number of female-headed households, particularly in the northern and eastern provinces. ...Tamil women and girls have historically been the targets of various forms of sexual assault following their arrest or detention at checkpoints. Such assaults were justified on the grounds that they or their family members were suspected members of the Tamil insurgency. Widespread sexual violence and crime has also been a serious issue in internment camps during the conflict. A major challenge to ensuring women's physical integrity in Sri Lanka is the lack of enforcement of laws, gender insensitivity within the police and judiciary and the reluctance of

[37] Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011.

women to report violence. The Asian Development Bank reports that sexual harassment is trivialised and there is a culture of acceptance around violence against women."[38]

The UN Declaration on the Elimination of Violence against Women[39] lays out Sri Lanka's obligations of due diligence in the elimination of violence. It defines violence against women as including any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, including when perpetrated by the State.[40] It recognises the particular vulnerability of women in detention, and women belonging to minority groups, and requires that States exercise due diligence to prevent, investigate and punish acts of violence against women, including those perpetrated by the State.[41] It further requires that women subjected to violence be able to access just and effective remedies for the harm suffered.[42]

The Secretary General's Special Representative on Sexual Violence in Conflict, Zainab Bangura in an interview said that there were two emerging issues that have not yet been addressed, i.e. men and boys raped in conflict - particularly during detention, as a means of intimidation - as well as children who are the product or victims of rape. She went on to say that with NGO's focused on the needs of women, "Nobody asks the men...Given their reluctance to come forward out of embarrassment or fear of being prosecuted for homosexuality in some countries, providing services for them is a challenge."[43]

[38] The Social Institutions & Gender Index (OECD), Sri Lanka: Restricted Physical Integrity, 9 March 2014.

[39] A/RES/48/104, 20 December 1993.

[40] Articles 1 and 2.

[41] Article 4(c).

[42] Article 4(d).

[43] Excerpts from: Anderson, L. Interview "For me, one rape is too many" says UN Representative on Sexual Violence in Conflict, 27 February 2014. Available online at: http://www.trust.org/item/20140227073351-tgazx/

"He raped me by forcing his penis in my anus and in my mouth. He was very violent. I was angry and would try to fight him. I begged him not to. He said that the Tamil's people's mouths were only good for oral sex."

Witness 14, Male

"He forced his penis into my mouth. I had never had sexual relations with a man before. The man then got on top of me. He forced his penis into my vagina and had intercourse with me. I was on the floor. The man shouted insulting language at me throughout. He called me a 'bitch'. While this was happening, the other men and the woman were present. I think the woman said, 'cope with him, cope with him'."

Witness 21, Female

"The men put a cloth in my mouth to stop me screaming. They slapped me. They turned me over and one man got on top of me and raped me. The other man watched while the man raped me....I was very scared. Then he threatened me and said, 'If you tell anyone what happened here I will shoot your whole family'. I did not say anything to anyone about what happened to me that day, not even my parents."

Witness 15, Female

"I did not tell the other women in my tent that I had been raped as it was not something we would discuss in our culture. I suspected that the other women in my tent were also being raped, but I did not ask them about it. Over the entire period I was at this rehabilitation camp none of us discussed the fact that we were being raped."

Witness 9, Female

"The woman was there at the beginning. They were talking together. They were laughing and giggling. They knew what was about to happen. I screamed and tried to hold onto my blouse. She hit me. She pulled my top off and took a photo of me like that with a mobile phone. She went out and then the man undid his trousers and pushed me to the floor and raped me."

Witness 37, Female

"They raped me in that room. They also penetrated my anus with their penises. The room was very small so only one man could fit in it at a time. They used to take turns to rape me, one after the other. Usually each man would rape me at least once. Usually one would have his penis in my mouth while the other one raped me with his penis below. One day while interrogating me they also put a baton into my vagina."

Witness 32, Female

"He used one hand to squeeze my neck while I was standing and then he reached down with his other hand and squeezed my penis and testicles. He told me "you are a Tamil dog and should not have any future generations". He squeezed hard and it caused me terrible pain. He told me to hold his penis. When I refused he slapped me and told me "Tamil dog you will be dead if you do not hold it". In fear I held it. ... On one occasion one of the army guards came in and urinated on me. While doing so he told me, "you Tamils need a separate state. If you want a separate state you will have to take a bath in our urine."

Witness 37, Female

## Discrimination

The witnesses to this report are ethnic Tamils suspected of being members of the LTTE and/or pro-LTTE supporters who have family members who were members of the LTTE and/or were supporters. The UNHCR Eligibility Guidelines - Assessing the International Protection Needs of Asylum Seekers from Sri Lanka - makes the point that: "At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the northern and eastern provinces of Sri Lanka. Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives."[44] The Guidelines go on to comment, "However, previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment which may give rise to a need for international refugee protection, depending on the specifics of the individual case."[45]

As a party to ICERD, Sri Lanka has assumed the overarching obligation to pursue a policy of eliminating racial discrimination in all of its forms, including based on racial or ethnic origin.[46] Sri Lanka's responsibility to eliminate racial discrimination obliges the state to not engage in acts or practices of discrimination and to ensure that all public authorities act in conformity with ICERD.[47] The definition of discrimination includes measures that have the purpose or effect of nullifying or impairing the recognition of human rights and fundamental freedoms.[48]

Witness testimony discloses a pattern of targeting Tamils for abduction and arbitrary detention unconnected to a lawful purpose, involving widespread acts of torture and rape. The ICERD Committee has explicitly recognised sexual violence in detention against a particular ethnic group as being a form of racial discrimination with an additional gendered quality,[49] and has emphasised that the fulfilment of a state party's obligations depends heavily on the conduct of "national law enforcement officers who exercise police powers, especially the powers of detention and arrest."[50] Sri Lanka must safeguard against profiling and ensure that arrests do not occur based solely on membership of an ethnic group.[51]

[44] UNHCR Eligibility Guidelines for assessing the International Protection Needs of Asylum Seekers from Sri Lanka, 21 December 2012, Risk Profiles A.1: Persons suspected of certain links with the Liberation Tigers of Tamil Eelam (LTTE).

[45] Ibid.

[46] Article 2.

[47] Article 2(1).

[48] Article .1.

[49] CERD, General Comment 25: Gender-related dimensions of racial discrimination, A/55/18 (1993).

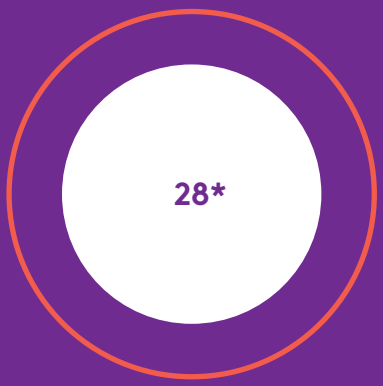
[50] CERD, General Comment 13: On the training of law enforcement officials in the protection of human rights, U.N Doc HRI\GEN\1\Rev.6 at 203 (2003). The Committee also sets out preventative obligations which apply to Sri Lanka.

[51] CERD, General Comment 31: the prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18.

# Detention:
# (Total Cases = 40)


Abducted in a white van


Abducted in a jeep/car



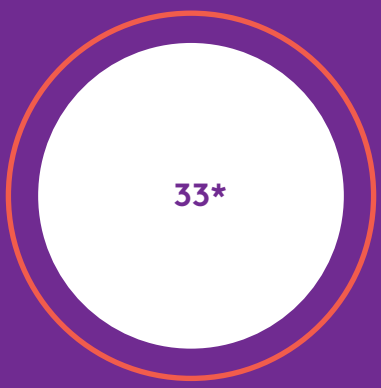

Blindfolded/handcuffed


Multiple abductions over years


Known detention site


Unknown detention site


Hears/sees others tortured




Photographed & fingerprinted


Multiple branches of security forces involved

# Torture:
# (Total Cases = 40)

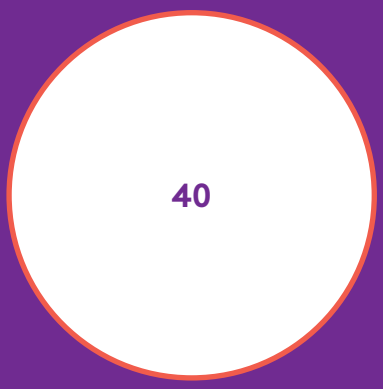

Beaten with pipes


Cigarette burns


Petrol/chillies in bag


Water torture


Hung upside down




Beaten


Torture using chillies


Rehabilitation cases


Branded hot objects

# Sexual abuse: (Total Cases = 40)


Vaginal/Anal Rape of women

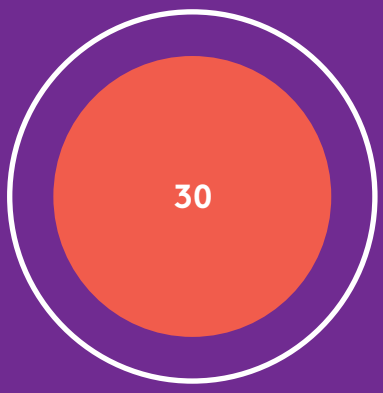

Anal Rape of Men


Forced oral Sex


Other sexual torture


Gang rape


Suffer multiple incidents of sexual abuse

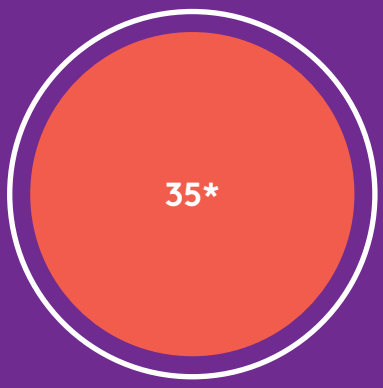



Rendered unconscious


Multiple torture types

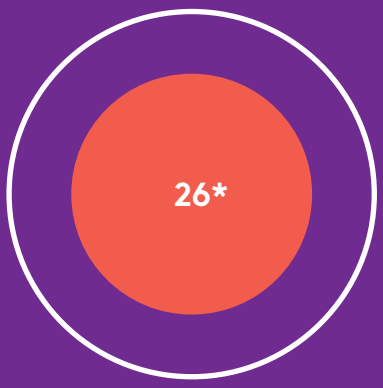

Suicide attempts

# Escape:
# (Total Cases = 40)




Forced to sign confession in Sinhala


Bribe for release




Assumed going for execution when released


Uniformed perpetrators


Plain clothes perpetrators


Female perpetrators


Cases tortured 2013 – 2014


Cases tortured 2011 – 2012


Cases tortured 2009-2010

# Infographics Explanatory Notes:

* Question not always asked.
** These add up to more than 40 because of multiple abductions. If someone was held in an unknown place on two occasions it would only be counted once.

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**Beaten with Pipes:** filled with cement or sand.

**Water Torture:** head submerged in buckets, sprayed with hosepipes, sprayed with water to prevent sleep or to bring round someone unconscious.

**Other Sexual Abuse:** squeezing/scratching breasts/testicles/penis, pulling chest hair, kissing and groping body, stripping naked, biting genitals, hitting testicles in a drawer, urinating on people.

**Chillies:** throwing chilli powder in face, soaking a plastic bag in chilli powder and putting over the head, burning chillies and forcing someone to inhale the fumes while upside down.

**Beating:** with sticks, batons, cricket wickets, wires, also head smashed on wall, pulled around by hair, hands pounded with rifle butt, slapping, stepping on face, stamping on toes, hitting penis and testicles with pipe.

**Suicide Attempts:** one in Sri Lanka and the rest abroad. Does not include at least one case of self-harming.

**Cases Tortured by Year:** where witnesses were tortured over a period of several years we have noted only the most recent year.

# Case Study 1: Gowri

When she talks about her husband you can see this animated young woman is still very much in love. "He was very affectionate and he always helped me in the house – doing more than half the work," she recalls.

But Gowri hasn't spoken to her husband for more than a year. She says, "I have no idea where he is, he's probably still in Sri Lanka." It's too dangerous for them to be in contact. Gowri's relatives back home are too frightened to talk to her now.

Their young daughter asks where her daddy is, when she sees the other fathers at school. Gowri tells her he is still in Sri Lanka and he will come, or "I say he's busy and can't come to the phone." Her child studies the single photo they have to keep the memory of her father alive.

It's not the first time Gowri has been a single mother. When eight months pregnant she was sent to give birth in a government hospital just as the war was escalating. She didn't tell them she'd been a rebel before she married.

While convalescing, she was informed that a bomb had hit her house and her husband was probably dead. She went back into the war zone with the newborn baby to search for him, trying to survive the shells raining down on the beach that spring of 2009. Starving, she struggled to produce breast milk for her child. Imprinted in her memory is the carnage when a Sri Lankan shell struck pregnant women and new mothers queuing for milk powder." It was like a meat market, there were pieces of human flesh strewn everywhere. The wounded were crowded everywhere. I never thought I would come out of that place alive."

On the last day of the war, Gowri escaped on foot, carrying her baby. She had nothing left except the clothes she was wearing. She did not tell the Sri Lankan authorities she had belonged to the Tigers nor did they suspect this, because of the baby. A relative paid a bribe to get her out of the camp for survivors.

It was years before she discovered her husband was alive. As a rebel, he'd been sent to a special rehabilitation camp. He met his child for the first time and they quickly bonded. But Gowri noticed the scars on his body. He never answered her questions about what had happened in detention.

"He was withdrawn. It was as if he was in a daze. At times he would show his love and affection but then suddenly get angry for no reason. He seemed to have lost the desire for sex but he wasn't like that before."

One year later, Gowri was walking home when she noticed a white van parked on the roadside. Four men in plain clothes asked for her identity card. They ordered her to come with them to answer some questions, saying they knew she was a rebel who had avoided the rehabilitation process. She started to scream but they shoved a cloth in her mouth. Handcuffed and blindfolded she was bundled into the van.

"I knew then. I started to dread what would happen. I thought I would not survive to see my child again."

This is what happened. She was locked in a windowless room with no furniture. On the first day the interrogators – men and women – came to her room and asked her in broken Tamil why she'd hidden the fact she was a rebel. "I said I was married and had a child and wasn't a Tiger. They said they had evidence that I was." One of the women ripped Gowri's blouse off, slapping and punching her.

The second day she was taken to a special interrogation room, by officers who said they were from the Criminal Investigation Division. She saw wires, batons and plastic pipes in the corner of the room. There were also ropes hanging from the ceiling beam but she did not notice the water barrel then. First they fingerprinted and photographed her, despite her swollen cheeks and ripped blouse. Then she was tied to a chair and beaten with the electric cables. She continued to deny ever being a rebel for fear they'd kill her if she confessed.

One of the men put a plastic bag soaked in petrol over her head and tied it around her neck. She passed out. That night the men and women came to her room and kicked and beat her again, joking and laughing among themselves in Sinhala. From their tone, Gowri guessed what was coming next.

After half an hour the women left. The men started to fondle and kiss her breasts and tear off her clothes. They shoved their fingers up her vagina. "I fought hard but they were slapping me. They were laughing. Then kept slapping me and knocked me out unconscious."

When she came round, she was covered in semen and bleeding heavily from her vagina and also had a lot of pain in her anal area as if something had been inserted there.

She lay on the floor and cried for several hours, unable to clean herself or even cover her body because her clothing was torn. The next day she was taken into the interrogation room, by the men who had raped her. They lit cigarettes and took turns burning her flesh. This time she noticed the water barrel because they submerged her head in it until she passed out unconscious.

Eventually Gowri agreed to sign a confession in Sinhala, a language she could not read. She wonders whether she could have spared herself the rape and torture had she signed earlier but concludes: "They were behaving like animals and I think they would have done it anyway they want to destroy us and our race. They want us to be their slaves."

A few days later a new group of men blindfolded and handcuffed Gowri. "I was sure the time had come for me to die. I was in a terrible state and fell to the floor crying and begging. I told them, 'let me go, I have a child.' I was convinced they were going to kill me." The men took no notice and led Gowri out of the room into a vehicle and drove off.

When the vehicle came to a stop and the blindfold removed, they were in an isolated spot. Ten minutes later a van appeared and Gowri's uncle got out with another man. "I was so happy. That was when I knew I would be going home," she says. But she didn't go home. Bruised and swollen, she was taken straight to a safe house. She was given paracetamol and antiseptic cream but it was too dangerous to go to a doctor. The next morning her daughter was delivered to her and they hid until they could escape to India. Gowri never saw or talked to her husband; as a former rebel he knew he was being watched and he didn't dare come to her though he still loved her very much.

It was only when she reached the UK that Gowri spoke for the first time about having been raped and tortured. It was a relief to confide in a female relative. "She said she was proud of me that I could tell her in detail what had happened and she praised me for my courage. But I didn't tell her everything then as she was crying and I didn't want to upset her." Gowri says if her mother had been alive she wouldn't have told her about the rape. "You get depressed if you don't tell someone," says Gowri, "but in our culture if I say I've been raped people look at me in a different way, they avoid us."

## Conclusion

This investigation into the violations committed in the post-war period paints a chilling picture of the continuation of the conflict against the ethnic Tamil Community with the purpose of sowing terror and destabilising community members who remain in the country. The violations documented include abductions, arbitrary detention, torture, rape and sexual violence.

While the sample of persons interviewed amounts to no more than 40 persons, 32 of the 40 statements are supported by detailed medical and psychiatric records including independent medico-legal reports (MLRs) from well-known medical experts, and written in accordance with guidance contained in the Istanbul Protocol. While the sample of cases documented is small, nevertheless it fully supports and is consistent with the existence of a widespread pattern of abuse by the security forces of Sri Lanka perpetrated against ethnic Tamils from Sri Lanka, as described in reports from major human rights NGO's, and in line with concerns raised in documents produced by UNHCR.

Many witnesses to this report confirmed that they had left the LTTE of their own accord before the end of the war and had then gone abroad to study. Others had been sent by relatives abroad to study in order to escape the scrutiny of the security forces. In some instances, they had been released from the camps before going abroad.

Many of the witnesses interviewed for this report returned voluntarily to Sri Lanka; in some cases because they wanted to visit relatives back home or because their asylum applications had been refused.

On return to Sri Lanka they had been apprehended by the security forces and subjected to a series of ongoing violations including abduction, arbitrary detention, rape and sexual violence, torture and cruel and inhuman treatment.

The witnesses report that their families had paid bribes through intermediaries to the security forces, which allowed for their release. They also paid bribes for documentation allowing them to leave the country, safe passage through the airport, and for air tickets to an intermediary country before finally arriving in the UK.

It is difficult to avoid drawing the clear inference that the witnesses were targeted because they are Tamil and suspected of supporting or having a connection with the LTTE that meant that they were of continuing interest. In some cases, an additional issue may be that there was a perception that their families were willing and able to pay the large sums of money demanded for their release and because many of the witnesses targeted had relatives or friends living abroad.

Witnesses who returned to the country said that they were surprised that they were apprehended by the security forces on arrival in Sri Lanka, either outside the airport or after arrival at their home destination. Some witnesses report having been abducted after spending some time at home. Evidence has emerged that the Government of Sri Lanka constructed a

central database recording the details of the Tamil community in Sri Lanka as well as LTTE suspects. Every suspected LTTE member was fingerprinted and their photographs taken to be included on this central database. In addition, the security forces debriefed thousands of Tamils at the end of the civil war entering their details into the database. The database also registers Tamils perceived by the Government of Sri Lanka to be a risk to future stability.[52] It is also alleged that its reach has also been expanded to include Diaspora members who participate in anti-government protests and who have been involved in lobbying and advocating for a war crimes inquiry. The UK Country Guidance note makes the point that the Tamil Diaspora has been heavily penetrated by the Sri Lankan security forces and that photographs are taken at public demonstrations and that the Government of Sri Lanka may be using face recognition technology to identify individuals.[53]

Since 2009, the Sri Lankan government's security policy has become increasingly sophisticated and is based on intelligence and the comprehensive surveillance of its Tamil citizens as well as the monitoring of the Tamil Diaspora.

While the Sri Lankan government is entitled in the interests of national security to put measures in place to prevent a possible resurgence of conflict by remnants of the LTTE, the post-2009 period has seen the government take this to new levels; Tamil citizens particularly in the North and East are under scrutiny in a way in which they were never before.

This kind of surveillance is completely disproportional to the perceived threat of renewed violence and violates their rights to privacy. Furthermore the "interests of national security' can never be a justification for torture and sexual violence. Unless the international community takes up the moral and legal consequences of and acceptance of "torture and sexual violence" by the Sri Lankan government, the ideology of "national security" will continue to define the discourse in Sri Lanka.

The stated purpose of the Government is to prevent any further act of terrorism but the reality is that the LTTE is a spent force and has been wiped out. Supporting this, the current situation report of the Swiss Refugee Council states:

"Although the LTTE may have been defeated, and there is not the slightest sign that this organisation has survived, the State machine of Sri Lanka is extremely paranoid and is trying to contain any resurgence of this group, or the germination of tendencies of independence alongside the Tamils. This concern has direct repercussions on all of the Tamils in the North and East because their ethnicity could indicate possible proximity to the LTTE. There are even suspicions directed at Tamils with a low profile, who do not escape surveillance. The authorities check whether these people may be in contact with the Diaspora. This is especially the case of those who were recruited, whether or not by force, by the LTTE. The authorities also extend their suspicions to acquaintances and relatives of former members of the LTTE. According to

[52] Sri Lanka OGN v14 para 2.4(8) p11 Issued in July 2013.

[53] Sri Lanka Country Guidance Case, para 336.

several reports, people who return from abroad are often suspected of maintaining links with the LTTE and are particularly threatened."[54]

It is probable that the Government of Sri Lanka needs to maintain the idea of a possible threat of an LTTE resurgence in order to justify the continued use of pernicious emergency regulations and terrorism legislation so as to maintain the intense securitisation of the North and East and the High Security Zones which effectively place the Tamil community there under siege.

The targeting of ethnic Tamils returning to the country, the well coordinated intelligence operation involving both the Sri Lankan security forces and immigration officials leading to the identification of the target for abduction and detention as well as, the manner in which it is executed, suggests an extremely well organised and coordinated plan between members of the different security agencies.

The similarity of the torture, rape and sexual violence experienced by each of the witnesses suggests a pattern and that the practices are systemic and wholly entrenched, not least because ill-treatment and torture have become methods of interrogation, with confession evidence being widely used and accepted; and to punish and humiliate detainees. Witnesses note in their evidence that the interrogation is directed at compelling them to admit their membership of the LTTE and to torture then into confessing the identities of other LTTE members as well as structures. Many are repeatedly asked about their knowledge of arms caches and are tortured repeatedly until they make some admission. Nothing that happens during the interrogation is random; witnesses report the detailed manner in which they are finger printed and photographed. Their bodies are photographed even after being tortured and raped leading to the inference that these photographs and fingerprints will be captured on the central database allowing the security forces to identify them even in the future. Many detainees have reported that they were stripped of their clothes by members of the security forces and examined for scars, which potentially serve of a record of their incarceration.

The similarity of the torture, rape and sexual violence perpetrated against the witnesses confirms a well-organised pattern of systematic abuse on the part of the Government of Sri Lanka security forces.

[54] Swiss Refugee Council: Adrian Schuster: Srl Lanka- current situation, 4.4 Profile of at risk groups, 4.4 Tamils in the North and East, 15 November 2012.

## Impunity

Impunity is "the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.[55]"

From the perspective of the States' obligations Orentlicher describes impunity as follows:

"Impunity arises from a failure by States to meet their obligations to investigate violations; to take appropriate measures in respect of the perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations."

This definition of impunity implies that there are no time limits to the obligation of the State to realise a process of accountability. After a change of government the new leaders have the same obligation to bring their predecessors to justice, as they have for their own functionaries. Impunity is a failure of the State as such[56].

ICJ Asia in its recent publication "Authority without Accountablity:

The Crisis of Impunity in Sri Lanka points out that,

"It has become a cliché to speak of a 'culture of impunity' but the phrase is entirely apt in describing the situation in Sri Lanka, where impunity has over the years become institutionalised and systematised: mechanisms to hold state actors to account for their actions have been eroded; checks on the arbitrary use of power have been diluted, if not dissolved; institutions to protect the independence of the judiciary have been eviscerated; the Attorney-General has become politicised; and political forces have continually sought to influence and interfere with the judiciary. Blatant disregard for the rule of law and the independence of the judiciary has crippled the justice system, leaving victims with little or no prospect of remedies or reparations for serious human rights violations."[57]

The unlawful impeachment of the former Chief Justice of Sri Lanka in January 2013, ongoing attacks on the Judiciary and Bar Council, and political interference in the appointment of the Attorney-General and the Chief Justice have resulted in a complete lack of faith in the Judicial system and the rule of law in Sri Lanka.

[55] Principles to Combat Impunity Orentlicher, UN, 2005 p.6. Also the international standards governing impunity are set forth in the *United Nations Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1, (*Updated Set of Principles to Combat Impunity).*

[56] Ibid.

[56] Ibid, page 14.

This report reveals how ongoing abductions, arbitrary detention and torture, including rape and sexual violence, have continued in Sri Lanka since May 2009. This is due to a failure to hold the security forces accountable, to investigate allegations and to bring to trial those responsible. The Government of Sri Lanka has created a climate of impunity such that those responsible for these violations behave as if they have the approval of the government at the highest level. The ongoing emergency regulations and the terrorism laws exacerbate the situation as they provide a basis for unlawful conduct. Administrative detention or detention without a charge inherently undermine human rights and rule of law and often create conditions not only for arbitrary detention but also for related human rights violations.

The UN Special Rapporteur on Torture in 2002 recommended that countries, "consider abolishing, in accordance with relevant international standards, all forms of administrative detention."[58] The UN Committee against Torture in its concluding observations on Sri Lanka expressed its concern over these provisions of the Prevention of Terrorism Act, calling on Sri Lanka to comply with Article 15 of the CAT and explicitly exclude evidence obtained by torture or ill-treatment.[59]

The Human Rights Committee[60] has noted the importance of not only prohibiting torture and ill-treatment, but also discouraging its practice through laws that explicitly prohibit the admissibility of statements obtained through torture or other prohibited treatment.[61] The United Nations General Assembly in a number of unanimous resolutions, "strongly urged States to ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings."[62]

Some of the witnesses to this report indicate that when complaints were made to the Sri Lanka Human Rights Commission and Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC), their families received threats and they themselves were punished for this during their abduction and torture. This response by the security forces prevents victims and survivors of human rights violations from accessing justice because they know that the perpetrators will not be held accountable for their crimes and are rarely brought to justice.

Sam Zarifi writing in the ICJ's report on impunity has also gone on to say, "The absence of justice removes an important deterrent to future perpetrators …this situation is the very definition of a climate of impunity, and constitutes a serious breach of Sri Lanka's international obligation to protect and promote human rights."[63]

Since the end of the conflict in May 2009, the Sri Lankan government has sought to evade the domestic and international demands for justice for the serious violations of international law by both sides to the conflict, estimated to have killed and injured tens of thousands of civilians.

[58] Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. E/CN.4/2003/68, 17 December 2002, para 26(h); see also Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects September 2010 accessed at: http://www.unhcr.org/refworld/docid/4ca0ae592.html (International Commission of Jurists, Beyond Lawful Constraints), p 22.

[59] Committee against Torture, Concluding Observations on Sri Lanka, supra fn. 18, para 11.

[60] The committee of UN experts.

[61] 168 UNHRC General Comment 20, supra fn. 136, para 12.

[62] UN General Assembly, Resolution 65/205, para 14; UN General Assembly resolution 64/153

[63] International Commission of Jurist (ICJ) Authority without Accountability: The Crisis of Impunity in Sri Lanka, October 2012.

The government created a Lessons Learned and Reconciliation Commission (LLRC) that was explicitly not an accountability mechanism but which emphasised in its recommendations, the need for an independent judiciary, a transparent legal process, and strict adherence to the rule of law, stating that these were necessary for establishing and maintaining peace and stability in the country. These recommendations remain unfulfilled to date.[64]

At the end of the conflict in the North and East of the country, President Mahinda Rajapaksa promised a new beginning – a return to normal administration and a renewed respect for human rights.[65] More than three years on, this promise has yet to be delivered.

This report points to the state of ongoing impunity that exists in Sri Lanka and attests to the fact that the security forces are able to act in the knowledge that the Government of Sri Lanka will not take appropriate measures to bring those responsible to justice through prosecution and the imposition of penalties commensurate to the offence; provide victims with effective remedies and reparations for their injuries; ensure the inalienable right to know the truth; and take other necessary steps to prevent recurrence of violations.

The ICJ in its report states:

"Overcoming impunity in Sri Lanka will require more than just pledges to respect a commitment for law reform from the Government. While the barriers to state accountability are systemic and institutionalised, the real issue is the lack of political will. There commitments are meaningless if they are not supported by actions; only when the Government takes concrete steps to bring State officials to account for their conduct will they be able to restore rule of law and public faith in the justice system."

Until that happens victims of human rights violations in Sri Lanka will not be able to access justice.

## Legal Evaluation of the violations perpetrated by the Government of Sri Lanka security forces

International law also establishes that certain abuses that form part of a widespread or systematic attack on a civilian population can constitute international crimes. Crimes against humanity have been defined in a number of international instruments, including the ICTY, International Criminal Tribunal for Rwanda (ICTR), and ICC Statutes. If the requisite elements are met, these acts are crimes regardless of any nexus to an armed conflict. The particular list of crimes varies across instruments, although, as with the list of war crimes, the list in the ICC Statute is broadly illustrative of customary international law.

[64] The President appointed the LLRC on 15 May 2010 under Section 2 of the Commissions of Inquiry Act No. 17 of 1948. The broad mandate of the LLRC was to examine the events that led to the breakdown in the ceasefire agreement between the government and the LTTE, to examine events that took place during the war up to 19th May 2009, and to propose a framework for future reconciliation. It released its final report to the public on 16 December 2011.

[65] See: '*No extension of emergency regulations – President*' *News Line*, 25 August 2011 accessed at: http://www.prio.gov.lk/news_update/Current_Affairs/ca201108/20110825president_proposes_to_lift_emergency_law.htm

The threshold requirement for crimes against humanity is the existence of a widespread or systematic attack directed against a civilian population.[66] With respect to the meaning of a civilian population, the inclusion in a civilian population of military elements or combatants does not affect its status as civilian.[67] As for an attack, it encompasses any mistreatment of that population and is not limited to armed conflict.[68] In determining the widespread or systematic nature of an attack, the ICTY, for instance, has considered the number, pattern and concentration of criminal acts; the consequences upon the targeted population; the participation of officials or authorities in the attack; the logistics and financial resources involved; the number of victims; the existence of a plan or policy (which is required under the ICC Statute); the methods used in the attack; the adoption of various discriminatory measures against the population; and other factors. The ICC Statute requires that a perpetrator have knowledge of the attack; this state of mind need not, however, include awareness of all the details of the attack.

The ICC's Elements of Crimes specifies that a "policy to commit such an attack" requires that the State or organisation actively promote or encourage such an attack against a civilian population."[69] This is further clarified by the statement that: [a] policy which has a civilian population as the object of the attack would be implemented by State or organisational 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.[70]

The failure of a State to take measures to stop crimes against humanity can be an important factor in evaluating whether a State or organisational policy exists. If a State is or would presumptively be aware of the existence of the prohibited acts amounting to crimes against humanity due to their organised, widespread, or systematic scale, this awareness of the perpetration of crimes makes the State complicit only if the intent behind the inaction is to further the attack, not if the State is unable to prevent it. Deliberate inaction could be a particularly relevant factor when evaluating the existence of crimes against humanity, especially if the State and the organisation's interests are interlinked.

The Rome Statute Explanatory Memorandum[71] states that crimes against humanity are particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. However, murder, extermination, torture, rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. An individual may be

[66] The ICC Statute states that "for the purposes of this statute" crimes against humanity be committed "pursuant to or in furtherance of a State or organisational policy to commit such attack." The element of a state policy is generally not required in customary international law, although, in the case of Sri Lanka, the allegations are of such a nature to be able to infer a State or organisational policy.

[67] Prosecutor v Blaškić, (ICTY Appeals Chamber), op. cit., at para 115..

[68] Prosecutor v Kunarac et al., (ICTY Appeals Chamber), op. cit., at para. 86.

[69] Int'l Criminal Court, Elements of Crimes, ICC-PIDS-LT-03-002/11, art. 7,¶ 3 (2011), *available at* http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf.

426 *AM. U. INT'L L. REV.* [28:2

[70] *Id.* art. 7, ¶ 3 n.6. 2013] What Makes a Crime Against Humanity, 427.

[71] Rome Statute of the International Criminal Court-United Nations Treaty Collection, United Nations.

guilty of crimes against humanity even if he perpetrates one or two of the offences mentioned above, or engages in one such offense against only a few civilians, provided those offences are part of a consistent pattern of misbehaviour by a number of persons linked to that offender (for example, because they engage in armed action on the same side or because they are parties to a common plan or for any similar reason).

Credible allegations in this report point to the Government of Sri Lanka and the security forces committing a number of acts between May 2009 and February 2014 which constitute an attack on the Tamil population in the North and East of Sri Lanka. They are designed to weaken the Tamil community and to prevent it from achieving a political solution based on regional autonomy. The "Sinhalisation" policy on the part of the Government of Sri Lanka, its intelligence network and the military occupation of the Northern Province are also part of the strategy to maintain control of the Tamil community.

The systematic and widespread use of torture, rape and sexual violence is part of a well-coordinated policy, devised and planned at the highest level of the Government of Sri Lanka and the military. Key to this policy is the targeting and pursuit of LTTE suspects, or those perceived as having been connected to the LTTE and/or having been supporters of the LTTE.

In terms of particular acts constituting crimes against humanity, this report concludes that credible allegations and violations point to the commission by the Government of the following crimes against humanity:

### Torture

The Rome Statute of the International Criminal Court, in force since July 2002, lists torture as a crime against humanity in article 7(1) (f) and is defined in 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 for the purpose of "obtaining information or a confession, or ...punishing, intimidating or coercing the victim or a third person, or discriminating, on any ground, against the victim or a third person."[72]

To quality as a crime against humanity of torture, the act or omission must be carried out with a prohibited purpose or goal: "The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person."[73] It is the severity of the pain or suffering inflicted in the case of torture that sets it apart from similar offences. In assessing the seriousness of such mistreatment, it has been held that the objective severity of the harm inflicted must first be assessed. Then a court should consider subjective criteria, such

[72] Prosecutor v. Kunarac et al.,case no IT-96-23/1-A, Judgment of June 12/ 2002, paragraph 142.
[73] Ibid.

as the physical or mental effect of the treatment upon the particular victim and in some cases factors such as the victim's age, sex or state of health. [74]

The credible allegations in this report support a finding of the crime against humanity of torture perpetrated against the witnesses calculated to extract admissions and/or confessions about their links to the LTTE and other LTTE members, as well as obtain information about LTTE activities and to punish them for their involvement with the LTTE.

### Rape and Sexual Violence

The Rome Statute includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or "any other form of sexual violence of comparable gravity" as a crime against humanity when it is committed in a widespread or systematic way. Article 7(g) of the Rome Statute specifically prohibits rape and, in addition, includes "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity" within the notion of crimes against humanity.

Moreover Article 7 (h) confirms persecution as a crime against humanity and includes gender as a new discriminatory ground. At paragraph 3 of the same Article, it is further specified that the term gender is general in nature, thus referring to both sexes. In the Elements of Crime annexed to the Rome Statute, the crime of rape requires the penetration of the anal or genital opening of the victim with an object or otherwise the penetration of any part of the body with a sexual organ, thus recalling the analogous first part of the *Furundžija* definition[75]. Similarly, a reference to coercive situations capable to vitiate the genuine consent of the victim of rape is provided for in Article 7 (1) (g)-1 of the Elements.

The credible allegations in this report support a finding of the crime against humanity of rape and sexual violence perpetrated against the witnesses calculated to extract admissions and/or confessions about their links to the LTTE and other LTTE members, as well as obtain information about LTTE activities and to punish them for their involvement with the LTTE.

Pursuant to its ICERD obligations, Sri Lanka must "severely punish" acts of torture, cruel, inhuman or degrading treatment and all violations of human rights which are committed by State officials, particularly police and army personnel, customs authorities, and persons working in penal institutions.[76] Sri Lanka must provide effective protection and remedies through national tribunals and other state institutions against acts of racial discrimination.[77] The duty of guarantee means that Sri Lanka is obliged to provide an environment conducive to reporting and provide effective remedies.

[74] Prosector v. Kvocka et al.,case no.IT-98-30/1-T, Judgment of November 2, 2001.

[75] *Furundžija* case No. IT-95-17/1-T, 10 December 1998.

[76] Ibid.

[77] Article 6.

# V. Recommendations

**Call to UN Secretary General, Ban Ki Moon, ICC Prosecutor, SRSG on Sexual Violence in Armed Conflict, and the Donor and International Community:**

In accordance with the UN's zero tolerance policy for sexual abuse and as a preventative measure as set out in the Secretary General's report in March 2013[78], and in the light of the credible allegations of torture, rape and sexual violence committed in the period following the end of the conflict in 2009 set out in this report, we call upon the UN Security Council to refer this report, which indicates reasonable grounds to believe that crimes against humanity are occurring in Sri Lanka to the Prosecutor of the International Criminal Court for further action against those who bear the greatest responsibility. Alternatively, we urge the ICC Prosecutor to explore the cases of individuals who bear the greatest responsibility and who hold a nationality of a State Party to the Rome Statute.

Second, call upon the Secretary General or the United Nations Human Rights Council to establish an independent international inquiry outside Sri Lanka to investigate and prosecute those responsible for these ongoing serious violations of human rights by members of the Sri Lankan security forces, with a particular focus on post-war abductions, torture, rape and sexual violence.

Third, call upon the Secretary General's Special Representative on Sexual Violence in Conflict and the Special Rapporteur on Torture to arrange a visit to Sri Lanka and initiate a special inquiry into rape and sexual violence with the mandate to report back to the relevant UN bodies on the allegations raised in this report.

Fourth, call upon the UN Department of Peace-Keeping Operations to immediately to suspend Sri Lankan police and military involvement in UN peacekeeping missions, pending an independent international inquiry into allegations of current, systematic and widespread sexual abuse by the security forces in Sri Lanka, noting that it is not sufficient to screen individual officers when there is a large body of credible evidence of a pattern of widespread and systematic sexual abuse of detainees by members of the security forces and collusion amongst multiple branches of the forces at high levels within the Government of Sri Lanka.

[78] Secretary General's Report to the General Assembly, March 2013 A/67/792–S/2013/149

Given the level of threat to witnesses, recommendations should take account of internationally accepted witness protection standards that would not only protect witnesses but their families remaining in Sri Lanka.

Call upon Member states having universal jurisdiction over torture, rape and sexual violence, to initiate prosecutions against identified perpetrators who bear the greatest responsibility, taking note of the need for witness protection measures as set out above.

# Further Actions:

### National Governments:

All decision makers within national asylum procedures should have careful regard, when seeking to evaluate risk on return to Sri Lanka in an individual application for asylum, of reports produced by well-established NGO's on the position of returnees and current UNHCR guidance on country conditions in Sri Lanka. Furthermore, it is imperative that all Sri Lankan asylum seekers should, prima facie, have access to full national asylum procedures. Given the concerns highlighted in this report about the treatment of detainees, asylum applications should proceed on the basis that they are well founded with the consequence that it is inappropriate to subject them to accelerated asylum procedures.

### The European Union:

Establish a cross-border Europe-wide study (subject to witness protection concerns) to investigate cases where Sri Lankan asylum seekers have entered one member country, failed to get asylum, returned to Sri Lanka and were tortured and then fled back to that country or to a second European country to claim asylum. There is currently no system to detect this phenomenon or for member states to know the results of their decisions.

### Donor counties:

Countries that funded projects connected to the government's rehabilitation programme in Sri Lanka should immediately commission an independent probe into the rehabilitation programme and audit whether their funding in any way made them, or continues to make them complicit in the torture, rape and sexual violence, of detainees by members of the security forces.

Internationally funded human rights training programmes for the Sri Lankan police and military should be not be conducted henceforth until there is an independent audit of their effectiveness.

**Tamil Diaspora Communities:**

To take concrete steps to address the social stigma surrounding sexual torture for both men and women and help the survivors and their families access medical and psychological support.

Be extremely mindful of the security risks to individuals abroad and their families in Sri Lanka when asking survivors of torture to participate in media interviews or protest in demonstrations abroad. We have a large body of credible evidence that Tamils who have demonstrated abroad have been abducted and tortured upon return to Sri Lanka. Family members remaining in Sri Lanka of those who protest or speak out in the media about torture from abroad are also being killed, disappeared, physically hurt or threatened. This means there are enormous adverse consequences to innocent people involved in identifying victims in public, even if they are safely abroad and give consent.

"We went and protested at Downing St. trying to put pressure on the Prime Minister and the UN to do something about war crimes. The other big protest we went to was when President Rajapaksa was coming to London. Later I went back to Colombo and had no fear for my safety. I gave my passport and passed through as normal and got a trolley and loaded my luggage. Just as I was walking down a long hallway on the way out of the airport, suddenly someone tapped me on the shoulder... I told them I was not LTTE, that I had come from the UK."

Witness 33, Female

# Sri Lanka Army in the North & East:

## 1. Vanni Security Force Headquarters (SFHQ-W)

2012-14: Maj. Gen. Boniface Perera
He took part in almost all major offensives against the LTTE and was the commander of the East during the war and then the Competent Authority for displaced war survivors in the northern region.

2011-12 Major General Sumedha Perera
He served under the current defence secretary in the Gajaba Regiment in Matale in 1989 (alongside Shavendra Silva and Jagath Dias). He was Brigadier General Staff SFHQ-W in 2009. He was a member of the Military Court of Inquiry set up to investigate allegations raised by Channel 4 news.

2009- 2011 Major General Kamal Gunaratne
In charge of the 53 Division during the last phase of fighting. In 2012 he was sent as deputy Ambassador to Brazil. He is part of the Gajaba Regiment and also Special Forces.

2007-2009 Major General Jagath Jayasuriya
After the war he became the Commander of the Army and is currently the Chief of Defence Staff.

Sources: Security Forces Headquarters Wanni website; Promoted as General, Sunday Times Lanka, 1 August 2010; Major General Sumedha Perera Appointed Wanni Commander, The Nation, 19 December 2010; Army Court of Inquiry on Channel 4 Allegations Referred to in the LLRC Report Submits its Findings to the Commander of the Army, defence website, 15 February 2013; Who Are Sri Lanka Army's 53 Division, Channel 4 Website, 8 December 2010; General Jegath Jayasuriya profile, Army website.

## 2. Jaffna Security Force Headquarters (SFHQ-J)

Jan 2014 Major General Udaya Perera
He was Director Operations of the Sri Lanka Army during the conflict, Sri Lanka's Deputy High Commissioner to Malaysia from 2009 to 2011.

2010-13 Major General Mahinda Hathurusinghe
He is now is Adjutant General. In 2009 he was Special Forces Commander in Kilinochchi.

2009-10 Major General L.B.R. Mark
He was commander of 51 Brigade in Jaffna from 2005-8 and after this post went on to become Security Forces Commander, Mullaitivu.

Sources: Change of Guards - Maj gen Udaya Perera, New Security Forces Commander Jaffna, Asian Tribune, 28 December 2013; New Jaffna Commander Takes over after Relinquishment of Maj Gen Hathurusinghe, Army Website, 13 January 2014; Maj Gen Daya Ratnayake New Chief of Staff, Ranil Wijepala, Sunday Observer, 31 January 2010; New Mullaitivu Commander Begins work after Maj Gen Mark's Farewell, Army Website, 13 January 2014; Security Forces to Assist Rehabilitation and Reconstruction - Maj Gen Mark, Ananth Palakidnar, Sunday Observer, 30 August 2009.

## 3. Commander Mullaitivu (SFHQ-MLT)

2014 Major General Jagath Dias.
He was Ambassador to Switzerland, Germany & the Vatican. He was in charge of 57th Division during war & rejected for a US training programme because of war crimes allegations. He was put in charge of the inquiry into the Weliweiya Inquiry & the 2013 Haiti Rape Case Inquiry. He served in Matale in the Gajaba Regiment with Gotabaya Rajapaksa during the JVP uprising, along with Kamal Gunaratne, Vagi Gallage and Shavendra Silva. The Swiss Federal Attorney General in 2011 decided that a criminal investigation into war crimes allegations would be launched if Dias was to return to Swiss territory.

2010-13 Major General L.B.R. Mark
As above.

2010 Major General Athula Jayawardene
Former Military spokesman, 2005-6 Director of Operations, Master General Ordnance of responsible for all procurements, 2006-8 the Defence Attaché for Sri Lanka in Washington, retired 2011 and currently Human Resources Manager at Serendib Leisure Hotels.

2009 Major General Nandana Udawatta
He was commander of 59 Division during the war and captured Mullaitivu; he then became Ambassador to Russia.

## 4. Security Force HQ East (SFHQ -E)

2011-14 Major General Lal Perera

2010 Brigadier Susil Udumalgala (now deceased)

Sources: SFHQ (East) website; Major Shuffle in the Army after poll victory, The Sunday Times, 31 January 2010.

## 5. Kilinochchi (SFHQ-KLN)

Major General Sudantha Ranasinghe
See above, was Commissioner General for Rehabilitation.

2012-13 Major General Udaya Perera
As above.

2011 Major General Nandana Udawatta
As above.

2009 Major General Athula Jayawardene.
As above.

2009 Major General Channa Goonetilleke
Commanded the 56 Division at Omanthai during the final phase of the war and was Area Headquarters Commander in Mannar.

Security Force Kilinochchi website; Major Changes in Top Army Positions, The Daily Mirror, 28 December 2013; Gotabaya faults US over unfair treatment of Maj Gen, Shamindra Fernando, The Island, 21 January 2013; Change of Guards, The Asian Tribune, KT Rajasingham, 28 December 2013; Two Army HQ;s in Mulaitivu and Kilinochchi, Lanka Views, 1 June 2009.

# VI. Appendices

# Background:

## 2009-14: A. Short History of Allegations of Sexual Abuse & the Sri Lankan Government's response

This section cites reports in the Sri Lankan and international media, NGO reports and UN documents that first raised the issue of rape and torture, as well as detailing where possible the response of the Government of Sri Lanka to the allegations. It focuses on sexual violence committed during the final stage of the war in 2009, in the camp for displaced war survivors, in the rehabilitation camps for suspected rebels and in the former conflict areas years after the end of the war.

During the final phase of the civil war, in the spring of 2009, a Tamil MP first alleged that the military were sexually abusing Tamil women after they had surrendered.[79] An Australian television channel then broadcast a short video that appeared to show Sri Lankan soldiers mutilating naked dead female bodies.[80]

After the war ended in May 2009, allegations of rape quickly surfaced from the camps for survivors. An aid worker told Channel 4 news that soldiers were abducting women from the camp and sexually abusing them. Sky News ran a similar story. Such accounts were later corroborated by testimony gathered by Human Rights Watch and local human rights groups.[81] One newspaper also alleged female detainees were being forced into prostitution and that government officials had been informed but did nothing.[82]

Sri Lanka dismissed these allegations as part of an LTTE information war against the government.[83] However the Sri Lankan Defence Secretary, Gotabhaya Rajapaksa, personally telephoned the Channel 4 reporter to tell him he was being deported because of his report on rape.[84] The Sri Lankan civil servant responsible for human rights responded to the allegations of sexual abuse in the media by joking about international aid workers having a bit of fun in the

[79] TNA Jaffna District MP, Selvarajah Kajendran, who subsequently faced threats.

[80] As Crisis Group points out, the footage at 0:31 in the SBS program, www.youtube.com/watch?v=wdht VjfslRc, corresponds to the footage at 38:52 of Channel 4's documentary "Sri Lanka's Killing Fields".

[81] In their 2013 report, Human Rights Watch (HRW) cited two cases of women who said they were raped after being detained in Manik Farm in 2009. HRW, We Will Teach You a Lesson: Sexual Violence Against Tamils by the Sri Lankan Security Forces February 2013.

[82] Amanda Hodge, Tamil refugees forced into sex rackets, The Australian, 2 July 2009.

[83] The Media Minister, Kehliya Rambukwelle.

[84] "You have been accusing my soldiers of raping civilians? Your visa is cancelled, you will be deported", Journalist who reported on internment camps in Sri Lanka tells his story, Nick Paton Walsh, The Guardian, 10 May 2009.

refugee camps.[85] He said Tamils themselves were having a lot of sex and there was only one case of a soldier going into a woman's tent for several hours in the middle of the night but for all he knew they might well have been discussing Greek philosophy .[86] The Sri Lankan foreign secretary at the time, now permanent representative to the United Nations, argued that the victorious military, "could have raped every single woman on the way if they wanted to", but didn't.[87]

In the autumn of 2009, the first eyewitness escaped abroad and described personally seeing sexual abuse in Manik Farm camp.[88] The Sri Lankan Defence Secretary responded by asking why she hadn't been raped or killed given how attractive she was.[89]

The Sri Lankan government reacted furiously in October 2009 to a mention of Sri Lanka by U.S. Secretary of State Hillary Clinton in a UN speech on sexual violence in conflict. The US backtracked and said it had not received reports that rape was used as a tool of war in Sri Lanka. A Sri Lankan official quoted the military saying sexual abuse, "was impossible, because there were stringent measures to deal with this." [90]

In Jan 2011, the European Center for Constitutional and Human Rights (ECCHR) warned of a pattern of sexual violence by the armed forces that required further investigation.[91] This followed the EU's suspension of trade incentives (known as GSP+) to Sri Lanka because of concern over its human rights record.[92]

Channel 4 broadcast its first documentary, "Sri Lanka's Killing Fields", in June 2011. It showed soldiers making lewd comments while observing semi-naked female corpses. The documentary included a woman who said she and her daughter were raped in front of her grandchildren.[93] The Sri Lankan government flatly denied all the allegations in the film and in subsequent films by Channel 4.[94]

The Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka in March 2011 referred to many indirect reports of rape and sexual violence during the final stages of the war and its aftermath by government forces and their Tamil surrogates. It argued the Channel

[85] The secretary to the disaster management and human rights ministry, Rajiva Wijesinha, in Claims of Abuse in Sri Lankan refugee Camp, Alex Crawford, Sky News Online, 21 May 2009.

[86] Gethin Chamberlain, Sri Lankan guards 'sexually abused girls' in Tamil refugee camp, The Guardian, 20 December 2009.

[87] Palitha Kohona.

[88] Gethin Chamberlain, Accounts circulated of rapes and murders, of people disappearing, As the shells fell, we tried to save lives with no blood or medicine, The Guardian, 15 September 2009. Also ANI, 20 December 2009.

[89] He said "Now she was talking about the rape. How can she talk about rape when she was so safely a person so attractive, so safely came into this area, she was in the IDP camp and released. She was not raped, she was not killed...", Video Part 5, Available at: http://transcurrents.com/news-views/archives/2921

[90] Rajiva Wijesinha Blog,Impunity for False Allegations – Rape, Hillary Clinton and Gethin Chamberlain, 2 June 2011.

[91] Oral Statement to the Committee on the Elimination of Discrimination against Women 48session, Anna von Gall, Geneva, 24 January 2011.

[92] Implementing Regulation (EU) No 143/2010 of the Council of 15 February 2010, Official Journal of the European Union, 20 Febuary 2010.

[93] Cited in Sri Lanka: Briefing to the UN Committee against Torture 2011, Amnesty International. A later Channel 4 news story quoted a 58th Division soldier they called "Fernando" who said he'd seen a group of six soldiers raping a young Tamil girl, The Sri Lankan soldiers whose hearts turned to stone, Channel 4 Online, 27 July 2011.

[94] Sri Lanka later released a book saying the story of the grandmother made no sense because she had survived the incident. Appalling Journalism: Jon Snow and Channel 4 News on Sri Lanka, Engage Sri Lanka, Nov 2011. Other Channel 4 films were: 8 December 2010; "Sri Lanka's Killing Fields", 14 June 2011; "Sri Lanka execution video: New war crimes claims", 30 November 2010; "Sri Lanka 'war crimes': woman's body identified", 8 December 2010.

4 videos "raise a strong inference that rape or sexual violence may have occurred, either prior to or after execution."[95]

By contrast, Sri Lanka's domestic inquiry, the Lessons Learnt and Reconciliation Commission, largely ignored allegations of sexual abuse, while questioning the authenticity of the Channel 4 video. It recommended that the Sri Lankan government hold its own independent investigation into the video; the government has since announced this is to be done by the same military court of inquiry that previously exonerated the military of all war crimes without revealing why or how.[96] The UN Secretary-General noted in a 2013 report to the Security Council that the Sri Lankan government had no plan to provide redress for those affected by sexual violence during the war.[97]

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, pointed out that the faces of soldiers could be clearly seen in the execution part of the video. He added that the "obligation on the State to investigate cannot be discharged by simply denying that anything untoward has happened."[98]

One of the dead women in the Channel 4 video was identified as a well-known LTTE TV presenter, Isaipriya. In November 2013, video emerged showing Isaipriya surrendering to Sri Lankan soldiers, indicating she had been killed in their custody. The government dismissed the video as fake and continued to maintain she had died in battle.[99]

In advance of a review in 2011, the UN Committee Against Torture (UNCAT) asked Sri Lanka to report on its investigation of allegations of sexual violence.[100] After receiving a submission from Amnesty International[101] alleging there were at least seven secret detention centres in Sri Lanka, UNCAT again asked the government to provide information on investigations into rape and sexual violence.[102] Sri Lanka's Attorney General, Mohan Peiris, responded by stating his country had a policy of zero tolerance on torture and adding that its progress in honouring the Convention Against Torture had been exemplary in many areas.[103]

In a submission to UNCAT, the UK charity, Freedom from Torture, examined 35 cases of post war torture allegedly by state actors.[104] Sixty per cent of their sample had suffered sexual violence (including rape, sexual assault and violence to sexual organs), but many survivors

[95] Report of the Secretary-General's Panel of Experts, Paras 152 and 153, March 2011.

[96] LLRC Observations Cleared; Army Commander Hands Over Court of Inquiry Report to Secretary Defence, MOD website, 4/10/13.

[97] Sexual violence in conflict, Report of the Secretary-General, A/67/792 S/2013/149, UN General Assembly Security Council, 14 March 2013.

[98] Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Christof Heyns; Addendum, Summary of information, including individual cases, transmitted to Governments and replies received; Appendix I. Investigations into video footage which allegedly documents members of the Sri Lankan army committing extrajudicial executions, A/HRC/17/28/Add.1, pp. 423-482, 27 May 2011.

[99] Sri Lanka dismisses Channel 4 'fake' video of LTTE media woman killing, 3 November 2013. The Sri Lankan defence secretary, Gotabaya Rajapaksa, had also denied in 2011 that Isaipriya was ever in the custody of the Sri Lankan forces, "Video: Defence Secretary Gotabaya Rajapaksa speaks to 'Headlines Today'", transcurrents.com, 11 August 2011.

[100] List of issues to be considered during the examination of the combined third and fourth periodic reports of Sri Lanka (CAT/C/LKA/3-4), UN Committee Against Torture (CAT), 24 June 2011, CAT/C/LKA/Q/3-4.

[101] Secret detention centres' in Sri Lanka, BBC, 8 November 2011.

[102] Sri Lanka: Concluding observations of the Committee against Torture, Salem News, 27 November 2011.

[103] 47th Session of the UN Committee Against Torture Consideration of the Combined 3rd and 4th Periodic Reports on Sri Lanka Introductory Statement by the Leader of the Delegation of Sri Lanka, Permanent Mission of Sri Lanka to the United Nations, 8 November 2011.

[104] Freedom From Torture, Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009-2011, London, 2011.

suffered "intense shame" and gave accounts with "immense difficulty". Freedom From Torture also found, without exception, that money had been paid by family members to secure the release of detainees and it concluded there were a large number of unofficial detention sites.[105]

An important 2011 report by the International Crisis Group looked at women's insecurity post-war in the heavily militarised conflict areas.[106] In a section called, "Systematic Denials of Sexual Violence Involving State Forces", it stated:

"In Sri Lanka, the strategy of the government has been to refuse any form of impartial access to the conflict zone; resist vehemently, and crudely, even the existence of allegations; and fail to engage in any form of investigation. Such a strategy, over time, inevitably raises concerns that they have something to hide."

In 2012, the new Sri Lankan Attorney General, Palitha Fernando, asserted that several people who alleged police torture had self-inflicted wounds.[107] In 2013, speaking about sexual abuse in the North, Fernando said "most of the people who commit these offences [do so] because they think they can get away with [it]... They think they can suppress the evidence."[108]

In its representations to the UN Human Rights Council's Universal Periodic Review in 2012, Sri Lanka cited the establishment of Women's Protection Units with female police officers and Women's Centres in the welfare centres and the provision of counselling services as steps taken to prevent sexual abuse. Even if effective, these measures could at best only deal with the aftermath of sexual abuse rather than prevent it. Sri Lanka claimed action had been taken to combat sexual violence and argued there was no correlation between sexual violence and the heavy military presence in the former conflict areas.[109] Not convinced, the Austrian government asked Sri Lanka to respond to allegations of rape and sexual assault of Tamil women by security forces, while Denmark called for prosecutions of the military for human rights abuses, including sexual violence.[110]

February 2013 saw the first report to establish the scale of continuing sexual violence in Sri Lanka after the war, when Human Rights Watch (HRW) published a landmark study of politically motivated sexual assaults of mostly Tamil detainees. It documented 75 cases from 2006-12, the majority after the end of the civil war. It found sexual violence by the security forces continued well after the war and all the evidence strongly suggested it was widespread and systematic.[111] The Sri Lankan government dismissed it as "total fabrication" and "beyond any criminal activity, designed to tarnish the image of the country, total blatant lies."[112]

[105] A follow up report by Freedom from Torture a year later studied 24 cases of Sri Lankans who'd been tortured on return to Sri Lanka. See: Sri Lankan Tamils tortured on return from the UK Briefing, 13 September 2012.

[106] International Crisi Group, Sri Lanka: women's insecurity in the north and east, Report no 217, 20 December 2011.

[107] Namini Wijedasa, 'I don't think The Attorney General has been defending every act of The Government', 29 July 2012 accessed at: http://dbsjeyaraj.com/dbsj/archives/8798

[108] USAID, Preventing and Prosecuting Sexual Violence, December 2013.

[109] Report on the Working Group on the Universal Periodic Review, Sri Lanka, 18 December 2012.

[110] Ibid, para 38 and 128.80.

[111] Human Rights Watch (HRW), 'We Will Teach You a Lesson': Sexual Violence against Tamils by Sri Lankan Security Forces, February 2013.

[112] BBC, Sri Lankan forces 'raped' Tamils in custody, study says 26 February 2013.

Other published reports around the same time confirmed HRW's findings. The London-based charity Freedom From Torture reported in February 2013 that 15 Sri Lankans returned to Sri Lanka by the UK government had been tortured after being sent back.[113] The UN Committee Against Torture and the UK Parliamentary Foreign Affairs Committee later expressed concern over the UK's policy of returning asylum seekers to Sri Lanka.[114]

Two months later, in April, an Australian Tamil was interviewed on TV saying he'd been abducted, branded and raped when he returned to Sri Lanka and only escaped after a relative paid a large sum of money for his release. Sri Lanka's High Commissioner to Australia, Thisara Samarasinghe, formerly the commander of the Sri Lankan navy, called the allegations false.[115]

An academic paper published in May 2013, based on extensive interviews with Tamil women in Sri Lanka, found there was a significant increase in prostitution and coercive gender-based violence in the former conflict areas after the war and that some people suggested the local police were involved. The author said the attacks on women were political, targeting Tamils, and even more specifically, former Tamil Tiger rebels.[116]

When the UN High Commissioner for Human Rights, Navi Pillay, visited Sri Lanka in August 2013 she highlighted the issue of sexual harassment and abuse and raised it with ministers, provincial governors and senior military commanders as well as the Secretary of Defence.

In October 2013, a Minority Rights Group report said there were credible allegations of "rape and the sexual and emotional abuse of women" in the north of Sri Lanka by members of the armed forces.[117] Their report described soldiers at checkpoints making Tamil women pose for photographs and taking down their phone numbers and later making calls with sexual overtures. The Sri Lankan military responded by saying most of the perpetrators of sexual abuse were Tamil civilians. An Army spokesman acknowledged a limited number of cases of sexual violence involving military personnel, and claimed legal action had been taken in all the cases and those implicated had been discharged or punished.[118] It is assumed this was through courts martial or other military disciplinary procedures. A search of the court records in Colombo has found no information regarding prosecutions in a civil court and there have been no media reports of what would have been a landmark judgment given the paucity of legal cases involving military defendants.

[113] Letter to Freedom From Torture from UK Home Office, 6 February 2013.

[114] Ian Cobain, UK needs prompt action on human rights record, UN panel warns, The Guardian, 31 May 2013. Access at: http://www.theguardian.com/law/2013/may/31/uk-human-rights-record-un-panel and The FCO's human rights work in 2012, Foreign Affairs Committee, para 26.

[115] Heather Ewart, Man Claims Rape and Torture upon return to Sri Lanka, ABC, 25 April 2013 and High Commissioner says Sri Lankans don't need to seek asylum, ABC, 10 April 2013.

[116] Nimmi Gowrinathan, Inside Camps, Outside Battlefields: Security and Survival for Tamil Women, St Antony's International Review 9, no. 1 (2013): 11-32, May 2013.

[117] Minority Rights Group International, Living with insecurity: Marginalization and sexual violence against women in north and east Sri Lanka, 16 October 2013.

[118] SLA strongly rejects allegations of sexual violence in North, PRIU, 21 Oct 2013. According to Army spokesman's figures, from January 2007 until May 2009, seven security forces personnel were involved in five incidents of sexual violence; four of their victims were Sinhalese and only one was Tamil. From May 2009 to May 2012, the Army reported ten military personnel were involved in six incidents, with two Tamil, one Muslim and 3 Sinhalese victims.

It is notable that a majority of the victims listed by the Army were not Tamil. Furthermore the Army's account ignores the 2010 rape of a Tamil woman in the northern town of Vishwamadu, which is the only case of post-war sexual violence in the north in which military personnel are known to have been prosecuted in civilian court.

Similar statistics from a survey were quoted by Sri Lanka in its official response to the UN High Commissioner's report to the 24th Council session in 2014. The Sri Lankan government again blamed most of the rapes on "close relatives/neighbours" and said disciplinary action had been taken to discharge or punish those soldiers responsible and cases filed in court.[119]

In the run up the November 2013 Commonwealth Heads of Government Meeting, the Commonwealth Secretary-General, Kamlesh Sharma, announced that an 18 month long National Inquiry on Torture would be established in Sri Lanka, with Commonwealth assistance. It was to investigate all allegations of torture committed by government agencies or arms of the state from 2009 to the present. A month later, once the Commonwealth meeting was over, the project was postponed indefinitely. Asked to comment, the Commonwealth Secretariat said four months later that it was still discussing timelines and methodology with the Human Rights Commission of Sri Lanka.[120]

By November 2013, Freedom from Torture, announced they'd now documented a total of 120 cases of post-war torture from Sri Lanka[121]. Nearly half were people tortured after believing it was safe to return to Sri Lanka in the post-war period. The charity commented on the unprecedented nature of what they have seen from Sri Lanka, which now makes up their largest caseload.

Also in the weeks prior to the Commonwealth meeting, the BBC broadcast a documentary that collected twelve cases of rape after abduction by white vans in 2013 and seven cases of torture (including some sexual abuse) in the government's rehabilitation camps for suspected former rebels.[122] The programme quoted a senior UK human rights lawyer alleging that there was evidence suggesting Sri Lanka was committing crimes against humanity years after the war had ended. Asked for a response in advance of the broadcast, the Sri Lankan High Commission in London said the torture could have been inflicted by the Tamil Tigers themselves and claimed the allegations were part of a Tamil diaspora plot to defame the island and the interviewees paid to lie. There was no attempt to engage with the evidence, though there were credible reports of retaliation against some of those connected with the film. The Sri Lankan High Commission was invited to send a representative to a panel discussion at a screening of the film but declined. The UK foreign secretary, William Hague, responded to the BBC film by saying he was "very concerned by reports of a culture of impunity for rape and sexual violence."[123]

[119] Comments received from the Permanent Mission of Sri Lanka on the draft 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 February 2014.

[120] Email from Commonwealth Secretariat Press Officer in response to query, 4 March 2014.

[121] Freedom From Torture, Evidence of Ongoing Torture in Sri Lanka Hangs Over CHOGM, 1 November 2013.

[122] BBC World News Investigation reveals recent allegations of rape and torture in post-war Sri Lanka, BBC Press Release, 7 November 2013, and Video available at: http://www.youtube.com/watch?v=vNMDcrK_0E8

[123] Email to the BBC, 30 October 2013.

Many other UK media outlets reported on ongoing torture and sexual abuse in Sri Lanka before the Commonwealth meeting. The Times noted what it called "a campaign of rape and torture"[124]. In response, the Sri Lankan High Commissioner in London, Chris Nonis, said economic migrants were inventing stories of torture to get asylum or perpetuate a terrorist propaganda war.[125]

At the Commonwealth meeting itself, the Sri Lankan President Mahinda Rajapaksa said, "If anyone who wants to complain about human rights violations in Sri Lanka, whether its torture, whether it is rape... we have a system."[126] Asked about the phenomenon of abduction in "white vans", the President told Al Jazeera television this was mere speculation and propaganda and suggested that blue vans and black vans could be used instead of just white vans. He made light of the disappearances, saying they were often just girls who eloped with their boyfriends.[127] William Hague, on the other hand, spoke publicly of allegations that hundreds of men and women had been sexually assaulted by government forces during and after the war.[128]

In February 2014, the Australian-based International Crimes Evidence Project (ICEP) published a report on Sri Lanka that included an extended discussion of alleged rape and sexual violence during and after the war. Sri Lanka's military spokesman, Brigadier Ruwan Wanigasooriya, rejected the report as "old allegations" that the LTTE and its supporters had been making for the last five years.[129] In his annual Independence Day speech, just a day before the ICEP report's release, President Rajapaksa once again rejected all allegations of war crimes, including sexual violence and went as far as to suggest that leveling war crimes charges was actually a grave offence in itself.[130]

The US state department's 2013 human rights report on Sri Lanka, released in February 2014, cited "a number of credible reports of sexual violence against women in which the alleged perpetrators were armed forces personnel, police officers, army deserters, or members of militant groups."[131]

In her February 2014 report on Sri Lanka to the UN Human Rights Council, High Commissioner Navi Pillay reiterated concerns that women were vulnerable to sexual harassment and violence as a result of the heavy military presence in the north. Sri Lanka responded angrily to the suggestion that militarisation might endanger women and repeated assertions that it had taken concrete action when cases were reported. The government also denied that military personnel were involved in the civil administration in the north of Sri Lanka, saying, "all civil administration positions in the Northern Province are in fact occupied by civilians."[132]

[124] Robin Pagnamenta, Campaign of rape and torture overshadows Sri Lanka's summit, The Times, , 25 October 2013. Also, Lisa Holland, Tamil Man Tortured By Sri Lankan Army', Sky News, 14 November 2013.

[125] Ibid.

[126] The Daily Telegraph, Sri Lanka: President Mahinda Rajapaksa hits out at human rights critics, 14 November 2013.

[127] Al Jazeera Viewed at: YouTube, http://www.youtube.com/watch?v=WKPXiaoubj0

[128] Britain asks Sri Lanka to probe sexual violence, AFP, 13 November 2013.

[129] Sri Lanka Military Rejects Piac report, Government Website, 7 February 2014.

[130] President's Independence Day Speech, President's Website, 4 February 2014.

[131] County Reports on Human Rights Practices for 2013, US Department of State.

[132] Comments received from the Permanent Mission of Sri Lanka on the draft 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 February 2014.

## B. Reported Court Cases Involving Military Rape in Sri Lanka

In the last seventeen years there have only a handful of publicly reported court cases involving military men accused of the rape of Tamil women:

1. The Vishwamadu rape case is a landmark one where a Tamil woman displaced by the war brought rape charges against the military. In June 2010 a young mother alleged she was raped by two military men from the 572 Brigade, while two more soldiers are alleged to have sexually abused an older woman living in the same house. When the victim, who could identify the alleged perpetrators, reported the crime to the local military camp, she was told to have a bath first. Then she was offered money by the military to go away but she insisted on lodging a complaint with the police. A judicial medical report confirmed sexual assault. At a court hearing in which the victim identified her attackers, there were reportedly a hundred military men present to intimidate the victim. The accused were arrested but released on bail after five months. Since then, one has been absconding from the hearings, while the victim has been repeatedly harassed and threatened by military and police, most recently in February and March 2014.

2. In March 2001 two Tamil women, Sivamani Sinnathamby and Vijikala Nanadakumar, were arrested in Mannar by naval officers and raped and tortured in custody. They brought a case that was initially heard in a court in the Tamil-majority Mannar town but then transferred to Sinhala-majority Anuradhapura district, ostensibly for the safety of the accused. The victims were reportedly humiliated during court proceedings and faced repeated death threats. In 2006 the Attorney General's department decided to drop the rape charge and reduce it to a torture charge. In 2008 proceedings stopped after one of the women went missing. The other woman was then forced to flee abroad with her family.

3. In 1996, sixteen year-old Krishanti Kumaraswamy was raped and murdered at a checkpoint in Jaffna by six soldiers. Krishanti's mother, brother and a family friend were killed when they went searching for her. Five soldiers and one policeman were tried, convicted and sentenced to death. Their sentences were subsequently reduced. This is the only publicly known case of a conviction of Sri Lankan military personnel accused of the rape of a Tamil woman.

# Military Roles after the war:

## Governor of the Northern Province:

Major General G A Chandrasiri
He was the Commander of the Security Forces HQ in Jaffna in the final stages of the war and was then put in charge of displaced war survivors before retiring and being appointed Governor in 2009.

## Governor of the Eastern Province:

Rear Admiral Mohan Wijewickrama
He was appointed to the post by the President in 2006.

## Commissioner General of Rehabilitation:

**Initially this post was set up under the Ministry of Defence but is now under the Ministry of Rehabilitation and Prison Reform. It involved overseeing up to 14,000 suspected rebel combatants.**

2013-14: Major General Jagath K Wijetilleke
He was Commander of the 68th Division during the final phase of the war.

2012-13 Brigadier Dharshana Hettiarachchi
Previously Commander of the 22nd Division in Trincomalee.

2011 -12 Major General Chandana Rajaguru
He was the Security Forces Commander, Killinochchi.

2010- 2011 Major General Sudantha Ranasinghe
In 2014 he became the Commander of Security Forces HQ in Kilinochchi. He was active in key positions in the final phase of the war.

2009 – 2010 Lieutenant General R M Daya Rathnayake
He was key in fighting the LTTE in the East, commanding the 23rd Infantry Division there. He became Chief of Staff in 2010 and in 2013 Commander of the Sri Lankan Army.

Source: Website of The Bureau of the Commissioner General of Rehabilitation and www.army.lk website.

## C. Background: The Rehabilitation Camps

The rehabilitation camps were ostensibly set up by the Sri Lankan government to accommodate suspected former LTTE rebels and prepare them for reintegration into society after the war. LTTE fighters were instructed to identify themselves at the point of surrender, regardless of their role in the movement, how long they had spent with the LTTE or whether they had been forcibly recruited.

### Numbers

Initially it was reported that 11,000 former LTTE cadres were being rehabilitated. Then the Defence Ministry cited a figure of 12,000.[133] Recently the Sri Lankan President told a newspaper that Sri Lanka had "released 14,000 former combatants from prison."[134] There is no independent verification of numbers. As the US State Department 2013 human rights report pointed out, individual prisoners are frequently moved within the system making tracking difficult.[135]

### Venues

There is an equal lack of clarity about the sites used. The government set up "protective accommodation and rehabilitation centres" (PARC's) maintained by the Bureau of the Commissioner General of Rehabilitation for adult former rebel combatants. In 2010, the International Commission of Jurists reported the existence of a dozen PARC's. In 2012, the government said there were 22 such PARC's; then in 2013 they said there were 24. More recent media reports say only 3 remain operative.[136]

It's also unclear whether combatants were initially sent to detention centres and then transferred to rehabilitation centres. Those witnesses we interviewed saw no difference in practice and they were not informed about where or how long they would be held or whether they were in a detention or a rehabilitation centre.

### International Access

Sri Lankan defence secretary Gotabaya Rajapaksa claimed in a 2012 speech that, "several International agencies and Non Governmental Organisations, such as the IOM and UNICEF, were given free and unfettered access to the rehabilitation centres. So too were diplomats,

[133] Rehab and Rejoice, Defence Ministry Site, 30 August 2012. The figure of 11,700 is cited in From Vanni to Cinnamon Grand: Ex-fighters display dancing skills at IOM reception, Website of the Bureau of the Commissioner General of Rehabilitation, No date given.

[134] Sri Lankan president makes first-ever visit to Israel, Greer Fay Cashman, The Jerusalem Post, 1 September 2014. In December 2009, Sri Lanka's permanent representative to the UN, Palitha Kohona stated that "over 12,700 former combatants have been identified among the IDPs so far". "The 'Elders' statement on IDPs in Sri Lanka – sadly outdated and inaccurate – Dr. Kohona", Asian Tribune, 5 December 2009. For a discussion of the uncertainty surrounding how many people were detained under the rehabilitation system, see Sri Lanka's North I: The Denial of Minority Rights, The International Crisis Group, Asia Report N°219, 16 March 2012, pp. 10-12.

[135] County Reports on Human Rights Practices for 2013, US Department of State.

[136] More assistance for rehabilitated former combatants, Defence Ministry Site, 24 October 2012; Socialisation of suicide cadres, Defence Ministry Site, 29 August 2013 cites Poonthottam centre, Welikanda, Senapura centre and Kandakadu East centre as still operational as of September 2013.

media personnel, lawyers, and the family members of the beneficiaries."[137] This is simply inconsistent with what is reported by NGOs and untrue.

In the initial weeks after the fighting stopped in May 2009, the International Red Cross registered some former combatants in detention, but that access was rescinded in July 2009[138]. In February 2013, the government announced the ICRC had once again allowed access to the PARCs, though it is not clear the extent or form of access they have been granted.[139] It is safe to argue that at least until then, no organisation independent of the Sri Lankan government had anything like free and unfettered access to the PARC's, and inmates had no access to any international body with an oversight or protection mandate.[140]

The International Organisation for Migration (IOM) has had limited and controlled access to PARC's in order to conduct socio-economic profiling of those in rehabilitation in preparation for the reintegration assistance IOM delivers once they have returned home.[141] UNICEF had access to child soldiers under rehabilitation once they were screened and registered by the government.[142]

There are grounds for concern that IOM's involvement has been used by the Sri Lankan government to endorse its rehabilitation programme and lend it credibility. For example, in December 2010 the Defence Ministry website reprinted a press release from the presidential media unit claiming the IOM Chief of Mission had stated, "Former LTTE combatants at rehabilitation centres were well looked after and there had been no complaints."[143]

Witnesses interviewed for this report who had been through the rehabilitation programme say they were warned not to speak to representatives of IOM about torture or sexual abuse. In 2013 a BBC documentary cited evidence from seven people who alleged severe torture in the rehabilitation programme.[144] This was the first public report with eyewitness testimony that torture, not rehabilitation, took place in the camps.

## Legal Framework

In their 2010 report, the International Commission of Jurists (ICJ) said Sri Lanka's rehabilitation programme might amount to "the largest mass administrative detention anywhere in the world."[145] Their report had thirty references to torture, saying for example:

[137] Asian Tribune, Ensuring National Security Through Reconciliation and Sustainable Development' - A keynote address by Secretary Defense Mr. Gotabaya Rajapaksa, 23 August 2012.

[138] ICRC seeks access to all Sri Lanka camps, AFP, 27 May 2009 and various Wikileaks cables.

[139] PTI, Sri Lanka allows ICRC access to LTTE rehabilitation camps, 25 February 2013.

[140] Given that torture is routine throughout the Sri Lankan prison system despite regular ICRC visits, it is clear that ICRC access alone offers little protection from abuse.

[141] SriLanka generous towards vanquished –outgoing IOM chief, Post-war rehabilitation, Shamindra Fernando, The Island, 10 April 2013.

[142] Sri Lanka will be restored to its right place on the world stage - Defence Secretary, News.lk, 23 August 2013.

[143] Ex-LTTE cadres well looked after - IOM Chief, Ministry of Defence site, 17 December 2010. The story does not include direct quotation marks around this particular statement attributed to the IOM chief of mission, though it does for other statements he is said to have made.

[144] BBC Our World, Sri Lanka's Unfinished War, Frances Harrison, November 2013.

[145] Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects, ICJ, 2010.

"The ICJ is concerned that the Government's 'surrendee' and 'rehabilitation' regime fails to adhere to international law and standards, jeopardizing the rights to liberty, due process and fair trial. There are also allegations of torture and enforced disappearance. Access required for reliable and accurate monitoring by international agencies, including the International Committee of the Red Cross (ICRC), has been denied."

The UN Panel of Experts (2011) also expressed concern about the rehabilitation programme, as did the UN internal inquiry (2012) into Sri Lanka. The latter said:

"The Government's approach to the detention of surrendees raised serious human rights concerns, including: the mandatory and involuntary nature of rehabilitation, which involved the deprivation of liberty of the 'rehabilitee' and may have amounted to individual and collective punishment without criminal conviction; the denial of legal safeguards; and the duration of up to two years' detention without charge, trial or access to legal representation."[146]

Researchers say the legal framework 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.[147] In practice the length of detention often varied widely and in arbitrary ways.

## Screening

There was no transparency about who was sent for rehabilitation and for how long. Forced recruits in the last few months of the war, for example, could spend far longer in rehabilitation than they had with the LTTE. One researcher found the government's own statistics recorded only 1,351 people as senior leaders or members who took part extensively in LTTE operations or attacks. By contrast, over 8,000 of the people sent for rehabilitation were classified as forced recruits or people who'd never taken part in any LTTE operations.[148] The question arises as to why they needed rehabilitation at all given they may well have been victims of the LTTE forced recruitment policy.

More recently the government has used rehabilitation as a tool against Tamil critics. Defence officials threatened to send an outspoken elected female Tamil politician to a camp to be re-educated.[149] Leaders of student protests at Jaffna University in November 2012 were arrested and arbitrarily punished by being sent for rehabilitation; no charges were filed and there was no indication they had once been LTTE fighters.[150]

[146] Report of the Secretary-General's Internal Review on United Nations Action in Sri Lanka, November 2012.

[147] Crimes Against Humanity in Sri Lanka's Northern Province, 4 March 2014, Sri Lanka Campaign. This cites 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.

[148] Calleigh McRaith, "Arbitrary Detention in Sri Lanka: Internment, Rehabilitation, and Surrenderees in the Prison System", 14 February 2012.

[149] The Island, MOD ponders rehabilitating NPC member Ananthi, 14 January 2014.

[150] Urgent Action: Two Students Released from Detention, Amnesty International, 29 January 2013.

## Voluntary Rehabilitation

The government says, "a statement and letter of consent were obtained" from every "beneficiary." In practice we have yet to meet one witness who knowingly gave consent in writing.[151] There was also no right of appeal or access to a lawyer. One visitor to a rehabilitation camp says she was told, "[legal] counsel was not needed since no one wanted to challenge their position in rehabilitation or leave."[152] She was also assured interrogations were very infrequent, requiring a special court order before they could take place.

## Donors

ICJ in their 2010 report clearly warned that international donors could be complicit in arbitrary detention or worse if they funded Sri Lanka's rehabilitation programme:

"Given the current legal vacuum and uncertain conditions under which 'surrendees' are being detained, external donor support for Sri Lanka's rehabilitation efforts must be provided only on condition of compliance with international law and standards, or else risk complicity in a policy of systematic mass arbitrary detention."

Various international development agencies funded the IOM work with the rehabilitation system, including the socio-economic screening programme. In light of the evidence this report has revealed of rape and torture taking place in rehabilitation centres, donors should review their programming and decisions to support such work without any independent monitoring of the camps.

## Sri Lanka's Rehabilitation Philosophy

The Sri Lankan government says its approach is to reset the mindset of what it calls "killers" and "terrorists" to "alter their mentality back to normalcy, slowly but surely"[153]. One of the authors of the rehabilitation programme, Sri Lankan "terrorism expert" Rohan Gunaratna, described a "tremendous friendship" between the cadres and the soldiers made possible because they came from the same social background. He called it a "world class terrorist rehabilitation programme" that inculcated "inner peace and harmony" so "their hatred was replaced with love" and violence with peace."[154]

[151] Rehabilitation of ex LTTE cadre, a success story, Bureau of the Commissioner General of Rehabilitation website, No Date Given.

[152] Calleigh McRaith, Arbitrary Detention in Sri Lanka: Internment, Rehabilitation, and Surrenderees in the Prison System, 14 February 2012.

[153] Ministry of Defense and Order,Government of Sri Lanka. Official site, Socialisation of suicide cadres, 29 August 2013.

[154] Defence Seminar 2013 - Dr Rohan Gunaratna, SL Army Director training, available at http://www.youtube.com/watch?v=TykYCXSmb50 . In February 2014, a Canadian court ruled that Gunaratna had made false and defamatory statements against the Canadian Tamil Congress and was ordered to pay $53,000 in damages and court costs. Canadian court rules against terror expert Gunaratna, IANS, 19 February 2014.

The programme employed 254 staff to focus on education, vocational training, psychosocial and creative therapy, religious observance, counseling and meditation, social, cultural and family values, and recreation.[155] The training was said to include: English and Sinhala language courses, plumbing, masonry, carpentry, electrics, welding, aluminum fabrication, three-wheeler repair, beauty culture, leather work, tailoring, computing and music.[156]

According to Professor Gunaratna, several wings of the state assisted in the rehabilitation process: the National Reconciliation Unit at the Office of the Reconciliation Adviser to the President, the Lakshman Kadirgamar Institute of International Relations and Strategic Studies and Prof. Rajiva Wijesinha, M.P., as Adviser on Reconciliation to the President, as well as private companies and local NGO's.[157]

[155] Malkanthi Hettiarachchi, Institute for National Strategic Studies (INSS), Sri Lanka's Rehabilitation Program: A New Frontier in Counter Terrorism and Counter Insurgency, PRISM 4, no. 2, 2013.

[156] Website of the Bureau of the Commissioner General of Rehabilitation, Past Courses Section.

[157] Asanga Abeygoonasekera and Rohan Gunaratna, Reconciliation after Terrorism: The Sri Lankan Experience, , available at: http://dbsjeyaraj.com/dbsj/archives/10144, 30 August 2012.

# Rehabilitation release certificate:

## Reintergration Certificate

This Reintergration certificate is issued by the Commissioner General of Rehabilitation (CGR) to state that [redacted] whose Photograph endorsed and depicted as above has been reintergrated from the Temporary Accomodation and Rehabilitation centre PAMPAIMADU on [redacted] 2011.

Please note this certificate wil be valid for a period of 06 month. And confirms that the said person is reintergrated to the DS Division of [redacted] where the residential address is as the listed [redacted]

**Commissioner General of Rehabilitation (CGR)**
**Coordinating Officer**
**Coordinating Center for Rehabilitation**
**Vavuniya**

Copy:

Secretary Ministry of Defence
Bureau of Commissioner General of Rehabilitation
File

Tel: 011-2883-736/011 2 3070411/011 3168462

## Rehabilitation Release Certificate (translation)

For the attention of officers implementing Laws, and
For those who are concerned

Obtaining security and employment opportunity

1 The below mentioned trainee, who was in the safe custody Maradmadu Security Lodging and Rehabilitation Centre, established under the Rehabilitation Commissioner General's Division, operated under the guidance of His Excellency the President of the Democratic Socialist Republic of Sri Lanka, was handed over to his Parents/ Guardian on [redacted] 2010 after socialization.

2 I certify that during the rehabilitation period he successfully studdied the livelihood skills improvement programmes and educational programmes and has been observed during the rehabilitation period as a disciplined, good natured, honest person.

3 I request required unrestricted assistance to the above names for him to lead a fruitful life and to obtain productive service on his abilities and qualifications. If further information on is required please be informed to address this office.

**Brigadier S. Ranasinghe RWP RSV**
**Rehabilitation Commissioner Gener**

Copies:

1. Secretary Presidential Secretariat
2. Secretary Ministry of Defence
3. Secretary Ministry of Rehabilititation and Prisons Reform
4. Sri Lanka Police Headquarters
5. OIC Rehabilitation Vavuniya
6. OIC Maradamadu SRRC
7. File

## Release

Upon his or her release, a "rehabilitated" detainee is issued a "reintegration certificate" by the Commissioner General of Rehabilitation. This includes a photograph of the released person and their home address. Examples of the documents provided by victims interviewed for this report show they are valid only for six months at a time. Some documents state that the person has been "socialised".

In 2012 Crisis Group said they received reports that women released from rehabilitation camps faced harassment and sexual abuse from the police and military to whom they must regularly report.[158]

As of 2013, IOM reportedly had received complaints from about a dozen people who were detained again after being released[159]. The outgoing IOM chief was quoted in the Sri Lankan media saying the country "had been very generous towards the vanquished". The US State Department's 2013 Human Rights Report on Sri Lanka, on the other hand, noted "several released former combatants reported torture or mistreatment, including sexual harassment, by government officials while in rehabilitation centres."[160]

[158] International Crisis Group (ICG), Sri Lanka: Government Promises, Ground Realities, 1 March 2012.

[159] Shamindra Fernando, Sri Lanka generous towards vanquished –outgoing IOM chief, Post-war rehabilitation, The Island, 10 April 2013.

[160] County Reports on Human Rights Practices for 2013, US Department of State.

## D. Sri Lanka's Contribution to UN Peace Keeping Forces

Recent figures[161] show Sri Lanka ranks 25th out of 120 nations in terms of contribution levels, with 1060 personnel deployed. As of April 2013, Sri Lanka's Ministry of Defence reported that 12,210 Sri Lankan soldiers, 600 navy, 610 air force personnel and 572 policemen had served in the UN Peacekeeping forces since 2000.[162]

### Sri Lanka military or police are currently serving in the:

United Nations Mission for the Referendum in Western Sahara
(MINURSO)

United Nations Mission in the Republic of South Sudan
(UNMISS)

United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
(MONUSCO)

United Nations Mission in Liberia
(UNMIL)[163]

United Nations Stabilization Mission in Haiti
(MINUSTAH)

United Nations Interim Force in Lebanon
(UNIFIL)

United Nations Interim Security Force for Abyei
(UNISFA).

### Sri Lanka Troops in Haiti

As the Sri Lankan military points out, UN peacekeepers are called on to "protect and promote human rights, and assist in restoring the rule of law"[164].

Despite this, some Sri Lanka troops who have served in Haiti were active on the frontline in the final phase of Sri Lanka's civil war in 2009 when it is alleged war crimes and crimes against humanity were committed on a scale that challenged the entire regime of international humanitarian law.

[161] Office of the Chief of Defence Staff, Sri Lanka, accessed at: http://www.ocds.lk/unmission.html. The website contains a list of the different regiments and kinds of troops currently deployed in various UN peacekeeping missions.

[162] Caribbean Journal, Haiti: Sri Lanka Sends New Contingent of United Nations Peacekeepers, 2 April 2013.

[163] Only Sri Lankan police, not military forces, are deployed in Liberia.

[164] Camelia Nathaniel, Sri Lankan Peacekeepers have made us proud', Defence Ministry and Urban Development website, 13 July 2012. Accessed at: http://www.defence.lk/new.asp?fname=sri_lanka_peacekeepers_20120713

For example, the UN peacekeeping force in Haiti has included troops from the Vijayabahu Infantry Regiment, which also served in UN missions in Lebanon[165]. The Vijayabahu Infantry Regiment reportedly operated under the 533 Brigade commanded by Lt Col Jayanath Jayaweera who as of 2010 was in Haiti[166]. Along with him was Lt Col Wasaantha Herath who also commanded troops in the 2009 war, according to Sri Lankan media reports.[167]

Units of the Vijayabahu Infantry Regiment also served under the 57th division (commanded by Major General Jagath Dias) and then the 58th Division (commanded by Major General Shavendra Silva) during the final months of war in 2009. Both generals have been countering allegations of involvement in war crimes ever since.[168]

Jagath Dias was Ambassador to Germany, Switzerland and the Vatican from 2010- 2011 but was recalled after allegations that he was involved in war crimes in 2009.[169] The Swiss authorities said there was enough evidence to open a case against him if he returned.[170]

Major General Silva is currently Sri Lanka's deputy representative to the United Nations in New York, where he has been the subject of regular controversy. In 2012 he was appointed to the UN Special Advisory Group on Peacekeeping Operations. The Canadian diplomat heading the group said his participation was "not appropriate or helpful."[171] The UN Human Rights Commissioner, Navi Pillay, also wrote to the UN Secretary General expressing concern about his appointment.[172]

Silva was also the subject of a private law suit brought in New York alleging involvement in war crimes in 2009. The case was not entertained because of his diplomatic immunity.[173]

In 2012, Sri Lanka planned to post Shavendra Silva as High Commissioner to South Africa until NGO's in South Africa warned their government against the move, saying they would challenge its under their Constitution.[174]

[165] VIR Heroes remembered, Secretary Defence declares open Ranaviru Monument at VIR Headquarters, Ministry of Defence Urban Development website, 11 May 2012. Accessed at: http://www.defence.lk/new.asp?fname=sri_lanka_peacekeepers_20120713

[166] Daily Kos, U.N. Blue Helmets from Sri Lanka Come to Our Assistance in Haiti, 3 April 2010.

[167] Dhaneshi Yatawar, Soldiers risked life and limb to save civilians, The Sunday Observer, a , 24 May 2009

[168] For the military deployment details see: Security Force, Kilinochchi website at http://220.247.214.182/sfkilinochchi/57div_more_dtl.php and http://220.247.214.182/sfkilinochchi/571_3.php

[169] European Center for Constitutional and Human Rights (ECCHR), Dossier on Jagath Dias, , January 2011.

[170] Colombo Telegraph, Maj Gen Jagath Dias, enough evidence to open a criminal investigation against you!, 22 September 2011.

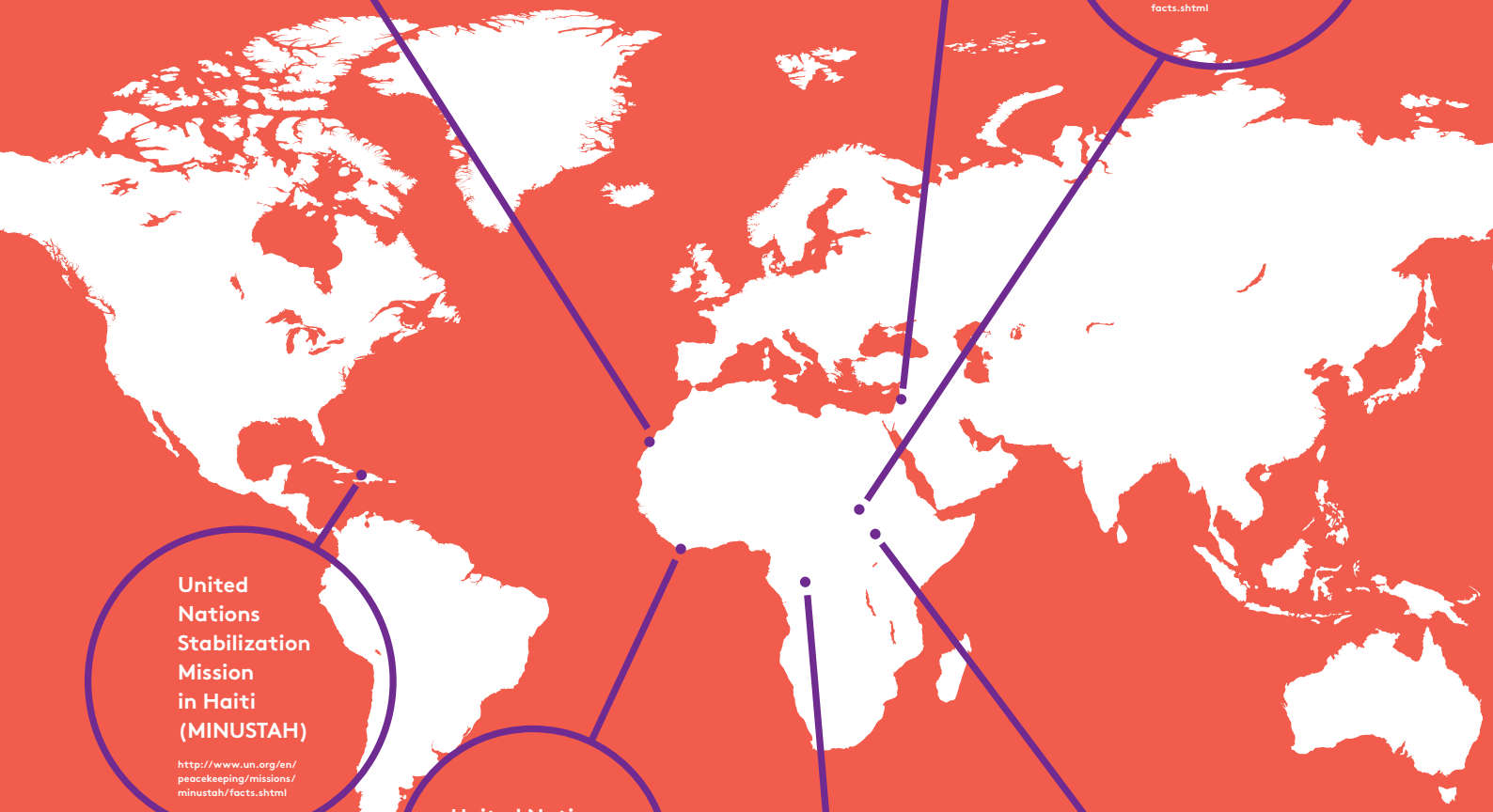
[171] BBC Online, UN Body Bars Sri Lankan Diplomat Maj Gen Shavendra Silva, 23 February 2012.

[172] Louis Charbonneau, Reuters, UN Rights Chief Raises Concern about Sri Lankan to Ban, 14 February 2012.

[173] BBC Online, Civil Lawsuit Filed Against Major General Shavendra Silva, 24 September 2011.

[174] South African Litigation Centre, South Africa's Obligation to Refuse to Receive and Recognise Sri Lankan General and Suspected War Criminal Shavendra Silva as Sri Lanka's Deputy Ambassador to South Africa, 6 December 2012.

# Sri Lanka's Contribution to UN Peacekeeping Missions:



United Nations Interim Force in Lebanon (UNIFIL)

http://unifil.unmissions.org/Default.aspx?tabid=11559&language=en-US

United Nations Mission for the Referendum in Western Sahara (MINURSO)

http://www.un.org/en/peacekeeping/missions/minurso/facts.shtml

United Nations Interim Security Force for Abyei (UNISFA)

http://www.un.org/en/peacekeeping/missions/unisfa/facts.shtml

United Nations Stabilization Mission in Haiti (MINUSTAH)

http://www.un.org/en/peacekeeping/missions/minustah/facts.shtml

United Nations Mission in Liberia (UNMIL)

http://www.un.org/en/peacekeeping/missions/unmil/facts.shtml

United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)

http://www.un.org/en/peacekeeping/missions/monusco/facts.shtml

United Nations Mission in the Republic of South Sudan (UNMISS)

http://www.un.org/en/peacekeeping/missions/unmiss/facts.shtml

## Allegations of Sexual Abuse by Sri Lankans in Haiti

In 2013 an eighteen-year old Haitian women alleged a Sri Lankan soldier raped and sodomised her.[179] The Sri Lankan military announced it was sending a court of inquiry to investigate. One of the five members of the inquiry team was Major General Jagath Dias.[180] Worryingly, media reports quoted officials saying the inquiry would, "ascertain whether there were any deliberate attempts by interested parties to discredit the Army and the country in particular."[181] Both the UN and the Sri Lankan military say they have a "zero tolerance policy" for sexual abuse.[182]

In 2007, one hundred and eight Sri Lankan members (including 3 officers[183]) of MINUSTAH were repatriated[184] after allegations of "transactional sex with underage girls."[185] Haitian lawyers accused Sri Lankan soldiers, "of systematically raping Haitian women and girls, some as young as 7 years old."[186]

In 2011 the army spokesman, Brigadier H. A. Nihal Hapuarachchi, told *The Sunday Leader* newspaper in Sri Lanka that a full inquiry had been completed and some soldiers had been found guilty.[187] A think tank researching the issue in 2012 said they could find no public information about whether any of the Sri Lankan soldiers were indeed prosecuted.[188]

Asked about the incident at the time of the repatriation, the Sri Lankan President told the media, "I respect them profoundly and consider them as the most disciplined Forces in the world. They have not killed or raped anybody."[189]

[179] The Sentinel, New Case of UN Peacekeeper Rape in Haiti, 16 September 2013.

[180] The Daily Mirror (Lanka), High profile investigation into soldier's alleged rape in Haiti, 23 September 2013.

[181] Colombopage, Sri Lanka Army high profile team to Haiti to investigate alleged rape by a peacekeeping soldier, September 24, 2013.

[182] Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, 20 September 2013.

[183] Kevin Edmonds Who Protects Us From You? , Stabroeknews.com , 17 October 2011.

[184] UN News Centre, Haiti: Over 100 Sri Lankan blue helmets repatriated on disciplinary grounds – UN, 2 November 2007.

[185] Centre for Economic and Policy Research, MINUSTAH Officers Found Guilty of Rape – But Get Just One Year in Prison, 13 March 2012.

[186] HLLN Letter to the UN, 9 November 2009, Accessed at http://open.salon.com/blog/ezili_danto/2009/11/09/letter_to_the_un_asking_for_investigative_reports_on_un_rape

[187] The Sunday Leader, Haiti Says Lankan Troops Raped Even Minors, 13 April 2013.

[188] Ibid.

[189] Lankanewspapers.com, Lankan Forces most disciplined in world – President, 3 November 2007.

"I am giving this statement because what happened to me has had a profound effect on my life and that of my family. Similar things are still happening to my people in Sri Lanka and I feel strongly that those responsible should be punished. My dreams have been spoiled. I still feel my life is not worth living. I am entirely dependent on others and still suffering the effects of what happened to me. When I sleep I hear boots or shoes and I fear that people are coming into my room to take me away."

Witness 4, Female

# International Law

Sri Lanka is a signatory to the principal international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR)[190], the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)[191], the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[192] and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[193]

The ICCPR and the Convention against Torture both prohibit torture and other cruel, inhuman, or degrading treatment or punishment. No exceptional circumstances whatsoever may be invoked by a State Party to justify acts of torture.[194] Torture is prohibited even when combating organised terrorism and crime. The absolute and non-derogable character of this prohibition has become accepted as a matter of customary international law. The ICCPR, CEDAW and ICERD prohibit discrimination on the basis of ethnicity, race and sex in the protection of the rights enshrined in those Conventions.

Sri Lanka is obliged under international human rights law to investigate serious violations of human rights, bring perpetrators to justice, and to provide an effective remedy or fair and adequate compensation to victims and to establish the truth about what happened. These obligations are known collectively as a "duty of guarantee" and are included in all of the major human rights treaties.

## I. Torture

The treatment to which individuals in this report have been subjected falls within the definition of torture as defined by the Convention against Torture.[195] As detailed in their testimonies the individuals have been abducted, detained and subjected to extreme pain and suffering through a range of methods. The testimonies establish a pattern of prohibited treatment including severe beatings (with sticks and pipes often until the individual is unconscious); simulated drowning; suffocation with plastic bags sprayed with petrol; hot wires being placed near the genital area; cigarette burns; branding with hot rods; and subjected to the smoke or powder of hot chillies.

[190] G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966); Entered into force March 23, 1976; Sri Lanka acceded to the ICCPR on June 11, 1980.
[191] G.A. Res. 39/46, U.N. Doc. A/39/51; Entered into force June 26, 1987; Sri Lanka ratified the Convention against Torture on February 2, 1994.
[192] Adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc.A/34/46, entered into force September 3, 1981, ratified by Sri Lanka on October 5, 1981.
[193] Adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, adopted by the United States on November 20, 1994.
[194] Article 2 Convention Against Torture.
[195] Article 1(1)

Witness testimony discloses evidence of rape or subjection to forms of sexual violence.[196] Rape and sexual violence are referred to as forms of torture by the Committee against Torture (CAT).[197]

Sri Lanka not only has an obligation to ensure an individual is not subjected to such treatment; but it also has a positive obligation to investigate allegations of torture and to implement measures to deal effectively deal with occurrences of torture. Sri Lanka therefore has a duty to protect, prevent, deter and punish acts of torture and to provide an effective remedy including reparations to victims.[198]

The testimonies indicate that Sri Lanka has failed to investigate properly and impartially allegations of ill treatment[199] or put in place mechanisms to enable victims to complain[200] and if appropriate have the ability to obtain redress.[201] None of the victims interviewed felt able to report their abduction and subsequent torture to the Sri Lankan authorities. The reasons for this are fear of reprisals against their family, fear of being abducted again and a general lack of confidence in the ability to obtain justice together with the general culture of impunity.[202]

Several reports by independent organisations have published allegations of torture committed by security forces since 2009.[203] In 2011 the Committee against Torture examined Sri Lanka's compliance with its obligations and expressed serious concern regarding allegations of the widespread use of torture and ill treatment. At paragraph 6 the Committee said:

The Committee is further concerned at reports that suggest that torture and ill- treatment perpetrated by State actors, both the military and the police, have continued in many parts of the country after the conflict ended in May 2009 and is still occurring in 2011 (arts. 2, 4, 11 and 15).[204]

Sri Lanka has failed to investigate claims or to hold perpetrators to account.

[196] Whilst sexual violence is vastly underreported because of the shame felt by victims, testimonies once again follow a pattern including the removal of clothing, the slamming of testicles in drawers and bruising of breasts from rough squeezing.

[197] See for example Committee against Torture, General Comment 2, Implementation of article 2 by States parties, U.N. Doc. CAT/C/GC/2, 24 January 2008 para. 18 and 22.

[198] CAT, Article 2(1) (take effective "legislative, administrative, judicial or other measures to prevent acts of torture") and Article 4 (to ensure it is a criminal offence)

[199] CAT, Article 12

[200] CAT, Article 13

[201] CAT Article 14(1)

[202] The obligations to investigate, prosecute and punish are affirmed in relation to perpetrators of gross violations of international human rights law and serious violations of international humanitarian law in Articles 3(b) and (4) of the UN's Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 16 December 2005. Furthermore, the UN Principles of Impunity mandate that States should provide judicial and non-judicial measures which are competent, impartial and independent to uncover the truth about past events and that those responsible must be prosecuted, and duly punished (principles 5 and 19).

[203] See for example, Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (March 2011); Report of the Office of the United Nations High Commissioner for Human Rights Promoting reconciliation and accountability in Sri Lanka A/HRC/25/23., 24 February 2014. Report by Human Rights Watch (HRW) "We will teach you a lesson" Sexual violence against Tamils by Sri Lanka Security Forces, 26 February 2013. Report by Human Rights Watch (HRW) World Report 2014 pp. 387-403.

[204] CAT: Concluding Observations of the Committee against Torture, Sri Lanka, December 8, 2011, UN Doc CAT/C/LKA/CO/3-4.

Article 9 of the ICCPR prohibits arbitrary detention and safeguards against arbitrary detention and abuse in detention; including in the context of a legitimate derogation under a state of emergency.[205] Based on the victim statements, Sri Lanka has violated Article 9. The UN Working Group on Arbitrary Detention has stated that the deprivation of liberty is arbitrary when "the total or partial non-observance of the international norms relating to the right to a fair trial...is of such gravity as to give the deprivation of liberty an arbitrary character".[206]

The pattern, which has emerged from the testimonies, is that of organised and systematic abductions. Individuals are abducted, handcuffed, blindfolded and put into the back of a white van. They are transported to secret locations (rural and secluded). The blindfolds are removed when individuals are within their cells or the torture chambers, but kept on during transfers between rooms. Individuals are not formally arrested, not informed of any charge against them; not taken before a judge to have the lawfulness of their detention reviewed; have no access to a lawyer whilst in detention and no right to communicate with a lawyer or their family. Such practice fails to deliver the minimum procedural safeguards guaranteed in Article 14(3) of the ICCPR.

Not a single individual interviewed has been charged or brought before a court of law to stand trial.[207] Witness testimony reveals a pattern where each individual is forced to sign a confession, which they have not read, and the contents of which have not been explained to them. Those whose families are able to afford to pay a bribe are released. Others who cannot pay for release are "disappeared", indicating potential breaches of the right to life in Article 6 of the ICCPR.

## III. Discrimination

CEDAW prohibits discrimination against women and obligates states to undertake a series of measures to end discrimination against women in all its forms including incorporating the principle of equality in their legal systems and establishing tribunals and other public institutions to ensure effective protection of women against discrimination.

In its 2011 Concluding Observations regarding Sri Lanka, the Committee on the Elimination of Discrimination against Women urged Sri Lanka,

(a) To protect women affected by the prolonged conflict, particularly the Tamil minority group, including internally displaced women and female ex-combatants, from any form of human rights violations;

[205] http://www1.umn.edu/humanrts/gencomm/hrc29.html

[205] Human Rights Committee, General Comment 29, 'States of Emergency (Article 4), UN Doc CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

[206] http://www.fidh.org/IMG/pdf/opinion_43_2013_syria_darwish_2_.pdf[206]Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27-31 August 2012, No. 26/2012 (Sri Lanka), A/HRC/WGAD/2012/26

[207] In contravention of Article 14(1) ICCPR.

(b) To promptly investigate, prosecute and punish all acts of violence, including acts of sexual violence perpetrated by private actors as well as by the armed forces, the Police and militant groups[208]

Contrary to Sri Lanka's obligations under the ICCPR and CEDAW, the testimonies in this report indicate that Tamil women continue to be targeted and subjected to discrimination in the form of sexual violence, rape and torture.

The UN Declaration on the Elimination of Violence Against Women[209] clarifies Sri Lanka's obligations of due diligence in the elimination of violence. It defines violence against women as including any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, including when perpetrated by the State.[210] It recognises the particular vulnerability of women in detention and in minority groups and requires that States exercise due diligence to prevent, investigate and punish acts of violence against women, including those perpetrated by the State.[211] It further requires that women subjected to violence be able to access just and effective remedies for the harm suffered.[212]

As a party to ICERD, Sri Lanka has assumed the overarching obligation to pursue a policy of eliminating racial discrimination in all of its forms, including based on racial or ethnic origin.[213] Sri Lanka's responsibility to eliminate racial discrimination obliges the state to not engage in acts or practices of discrimination and to ensure that all public authorities act in conformity with ICERD.[214] The definition of discrimination includes measures, which have the purpose or effect of nullifying or impairing the recognition of human rights and fundamental freedoms. [215]

Witness testimony discloses a pattern of targeting Tamils for abduction and arbitrary detention unconnected to a lawful purpose, where widespread acts of torture and rape occur. The ICERD Committee has explicitly recognised sexual violence in detention against a particular ethnic group as being a form of racial discrimination with an additional gendered quality[216] and has emphasised that the fulfilment of a state party's obligations depends heavily on the conduct of "national law enforcement officers who exercise police powers, especially the powers of detention and arrest."[217] Sri Lanka must safeguard against profiling and ensure that arrests do not occur based solely on membership of an ethnic group.[218]

[208] Concluding Observations of the Committee on the Elimination of Discrimination Against Women, Sri Lanka, 8 April 2011, UN Doc CEDAW/C/LKA/CO/7

[209] A/RES/48/104, 20 December 1993.

[210] Articles 1 and 2.

[211] Article 4(c).

[212] Article 4(d).

[213] Article 2.

[214] Article 2(1).

[215] Article 1

[216] CERD, General Comment 25: Gender-related dimensions of racial discrimination, A/55/18 (1993).

[217] CERD, General Comment 13: On the training of law enforcement officials in the protection of human rights, U.N Doc HRI\GEN\1\Rev.6 at 203 (2003). The Committee also sets out preventative obligations which apply to Sri Lanka.

[218] CERD, General Comment 31: the prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18.

Pursuant to the ICERD, Sri Lanka must "severely punish" acts of torture, cruel, inhuman or degrading treatment and all violations of human rights which are committed by State officials, particularly police and army personnel, customs authorities, and persons working in penal institutions.[219] Sri Lanka must provide effective protection and remedies through national tribunals and other state institutions against acts of racial discrimination.[220] The duty of guarantee means that Sri Lanka is obliged to provide an environment conducive to reporting and provide effective remedies.

## IV. International Criminal Responsibility

Torture and crimes against humanity are acknowledged to be crimes of universal jurisdiction,[221] enabling prosecutions of individuals to be initiated in some circumstances by third countries with universal jurisdiction laws, regardless of Sri Lanka's membership to relevant instruments relating to international crimes.[222]

Torture is well established as an international crime. The *jus cogens* nature of the international crime of torture justifies states in taking universal jurisdiction over torture wherever committed. International law provides that offences *jus cogens* may be punished by any state because the offenders are "common enemies of all mankind and all nations have an equal interest in their apprehension and prosecution."[223]

### In Prosecutor v Furundzijia [1998] ICTY 3 the International Criminal Tribunal for the Former Yugoslavia stated:

"Clearly, the jus cogens nature of the prohibition against torture articulates the notion that the prohibition has now become one of the fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate .....It would be senseless to argue on the one hand, that on account of the jus cogens value of the prohibition against torture treaties or customary rules providing for torture would be null and void ab initio, and then be unmindful of a State, say taking national measures authorising or condoning torture or absolving its perpetrators through an amnesty law."

Further, the Security Council has the power under Chapter VII of the Charter of the United Nations to refer cases to the International Criminal Court, which would otherwise not fall within its jurisdiction.[224]

The evidence gathered in this report indicates that Sri Lankan security forces are committing torture, arbitrary arrests and detention, rape and other inhumane acts as part of a widespread

[219] Ibid.

[220] Article 6.

[221] States have exercised universal jurisdiction laws relating to one of these crimes, including Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Israel, Netherlands, Norway, Senegal, Spain, the United Kingdom and the United States of America. More than 125 States have adopted laws of universal jurisdiction: Amnesty International, *Universal Jurisdiction: the duty of states to enact and implement legislation* (2001).

[222] For example, Sri Lanka is not a party to the Rome Statute of the International Criminal Court.

[223] *Dmejanjuk v Petrovsky* (1985) 603 F. Supp. 1468 F.2d 571).

[224] Article 13(b) Rome Statute.

and systematic attack on Tamil civilians.[225] Victim testimony recounts abuses that may fall within the definition of acts constituting crimes against humanity.[226]

Torture is defined in the Rome Statute as the "intentional infliction of severe pain or suffering, whether physical or mental",[227] which can encompass acts of rape. "Rape" is defined[228] as the invasion of the body[229] of a person by a sexual organ or other object and [t]he 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. Rape can also constitute inhumane treatment.

The definition is focused on coercion rather than non-consent.[230] Witnesses have reported that instances of rape were perpetrated by members of the government security forces in an environment of detention, constituting gross abuse of power and the threat of force and/or coercion.

The victim testimony in this report discloses a level of organisation and planning in the commission of these acts such as to indicate that they are part of a widespread and systematic attack against a civilian population, and that individual perpetrators participate at the knowledge or behest of their superiors and with impunity for their actions. The manner in which the witnesses describe their identification and interrogation indicates significant and prior intelligence gathering and planning. These acts are committed with uniformity by multiple perpetrators across multiple branches of the Sri Lankan government's security forces, in multiple secret locations throughout Sri Lanka; indicating that the commission of such acts is pursuant to orders.

Senior figures giving orders are criminally responsible for these acts of subordinates where they have knowledge or have wilfully disregarded information regarding the commission of crimes and where they have failed to take all reasonable measures to prevent or repress such crimes or ensure they are investigated and duly prosecuted.[231] Previous reports on human rights abuses in Sri Lanka corroborate allegations of rape and torture,[232] on which Sri Lankan authorities have failed to act.

[225] Article 7(1) Rome Statute.

[226] Article 7 of the Rome Statute.

[227] Article 7(1)(f) and 7(2)(e).

[228] Article 7(1)(g), together with the ICC Elements of Crime document, page 8.

[229] Where invasion is meant in a broad sense so as to be gender-neutral.

[230] Except where a person is shown to be incapable of genuine consent if affected by natural, induced or age-related incapacity: ICC Elements of Crime, page 8.

[231] Article 28(b)(i) and (iii).

[232] See for example, Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka (March 2011); Report of the Office of the United Nations High Commissioner for Human Rights Promoting reconciliation and accountability in Sri Lanka A/HRC/25/23. Advanced Edited version, 24 February 2014. Report by Human Rights Watch (HRW) "We will teach you a lesson" Sexual violence against Tamils by Sri Lanka Security Forces, 26 February 2013. Report by Human Rights Watch (HRW) World Report 2014 pp. 387-403.

# National Law

In addition to its duty to investigate under international law, the Government of Sri Lanka has, under its Constitution and national law, duties and responsibilities to investigate all crimes effectively and to be accountable when there is a failure to do so.

As outlined below, Sri Lanka clearly has an institutional structure and legislative framework capable, in many ways, of offering protection from and redress for human rights abuses committed by state actors. The Sri Lankan Penal Code[233], for example, provides, at least on a theoretical basis, for significant punishment of state officials who commit abuses.

However, and as noted below, because of the pernicious effect of the Prevention of Terrorism Act (PTA) and Emergency Regulations (ER), and an unwillingness to use the mechanisms for investigation and punishment that are in place, impunity has become entrenched. It is evident that there is a systemic problem of abuse and torture of civilians by the police and the army.

### Effect of national security laws - the PTA (and for pre-2011 cases, the Emergency Regulations)

Despite lifting the state of emergency in August 2011, the Sri Lankan government reformed the Prevention of Terrorism Act (PTA) to ensure that members of Sri Lanka's army and police force would retain the power to detain suspects without charge for up to 30 days. In January 2013, the government announced a new law that would allow the police to hold suspects for up to 48 hours without a warrant. In its February 2013 report, Human Rights Watch noted that[234]

"Persons mistreated under the Emergency Regulations or PTA are unlikely to come forward and make an official complaint because of immunity provisions in these laws. The emergency regulations provide immunity from prosecution for government officials who commit wrongful acts when they implement the regulations. Legal proceedings are prohibited if an official acted "in good faith and in the discharge of his official duties," and prosecutors and courts are likely to interpret this language broadly".

Such measures have clearly been conducive to the creation of a culture of impunity by effectively condoning and allowing the commission of human rights abuses by the army and police. Further, systemic abuses will continue while the use of ill treatment and the extraction of 'confessions' by the use of coercion and force remain standard techniques.

[233] *Penal Code* (as amended), 1956, Volume 1, Chapter 19, as amended. Legislative Enactments of Sri Lanka (Consolidated). Available at: http://www.lawnet.lk/list_page.php?id=4 .

[234] Human Rights Watch (HRW), *"We Will Teach You a Lesson" Sexual Violence against Tamils by Sri Lankan Security Forces* at pp 26-28, February, 2013.

## Duty for State officials to perform their functions without discrimination

The Constitution of Sri Lanka makes it clear that the government must undertake all its duties, including its duty to investigate crime, without discrimination.[235] All persons are equal before the law and are entitled to its equal protection, and equal access to available remedies.

In cases involving allegations of serious human rights violations committed by the State's security forces, a perception of bias against members of the Tamil community has been sufficient to undermine government's ability to deliver an independent investigation or encourage witnesses to come forward.

## Duty of the Sri Lankan authorities to investigate human rights abuses

Section 56 (d) of the *Police Ordinance* of Sri Lanka places a positive duty on all police officers to detect crime and bring offenders to justice.[236] Police officers also have a positive duty to investigate crime under Part V of the *Code of Criminal Procedure* (CCP).[237] Under Sri Lankan law, a Magistrate has the primary duty to investigate serious crime and give directions to the investigative police agency.

The Attorney General is appointed by the President.[238] The Attorney General's Department is the chief legal advisor to the President and to all departments and ministries of government, including State security forces and the police. The body of credible evidence from the witnesses who have provided sworn statements on which this report is based contains detailed allegations that perpetrators of the abuses committed against them were members of the security forces. They did not report these matters to the police because members of the police force were responsible for perpetrating the abuses against them that are detailed in their statements, and on the basis of a fear that any complaint would lead to further human rights abuses against the witness and/or family members still residing in Sri Lanka.
The independence and impartiality of the Attorney General, and his ability to deal effectively with complaints, may be perceived as being seriously compromised, given the Attorney General's dual role of dealing with and investigating complaints while, simultaneously, advising the government, and members of state security forces who act under it, and by being a direct appointee of the President. It is also clear, if the Attorney General had a genuine interest in investigating the allegations of widespread and systematic abductions, torture and sexual violence that have repeatedly come to the government's attention via reports from international and domestic bodies, and wished to conduct a full investigation, that he has a full range of powers enabling him to do so.

[235] Article 12, *The Constitution*.
[236] *Police Ordinance* (as amended), 1956, Volume III, Chapter 53, Legislative Enactments of Sri Lanka (Consolidated)
[237] Art. 109(5), *Code of Criminal Procedure Act* (CCP), No. 15, 1979
[238] Art. 41A Schedule II Part II, as amended by the 18th Amendment.

### Judiciary and national bodies

President Rajapaksa has been repeatedly criticised for his increasingly authoritarian approach domestically. Legal and constitutional developments have made it more difficult for Sri Lanka's legal system to address serious allegations of ongoing torture, rape and other abuses. Constitutionally, the impeachment of Sri Lanka's Chief Justice in January 2013 brought the judiciary's independence from executive influence into significant doubt. In addition, Sri Lanka's President has, since the 18th Amendment was passed in September 2010, the power to appoint members of key Commissions including the National Police Commission and the Human Rights Commission of Sri Lanka (HRCSL).

### Army

All members of the Army who commit human rights abuses are liable to punishment under the terms of military law. If a member of the Army is convicted or acquitted under military law, the accused can still be subject to prosecution in civilian criminal courts.

## F. Commissions of Inquiry

It is generally accepted by the international community that national Presidential Commissions of Inquiry in Sri Lanka, when dealing with allegations of serious violations of human rights committed by the security forces, even when overseen by an international group of eminent persons, are an abject failure. Thus witnesses are unnecessarily exposed to danger should they testify.

For example, in early August 2013, the Sri Lankan government appointed a new 'Presidential Commission to Investigate into Complaints on Missing Persons' with a six-month mandate to look into disappearances from the Northern and the Eastern provinces between 1990 and 2009. The Commission received about 16,000 complaints, and extended its mandate. A Joint Sri Lankan civil society statement to the Human Rights Council and International Community found "reports of constant interference of the security services to dissuade families from testifying before the commissioners."[239]

### Witness protection

Without the ability and willingness of witnesses to testify it is of course entirely obvious that there can be no proper investigation into human rights abuses, judicial findings on what happened and where the responsibility for those abuses lies, and no identification and punishment of individual perpetrators. Witnesses must therefore feel able to testify without fear of retribution against them or members of their families. Despite the State's obligations under international law to protect witnesses, there is currently no witness protection legislation in Sri Lanka. There is however a draft bill currently under consideration, and Sri Lanka's External Affairs Minister told diplomats in December 2013 that ,"it was nearing the end of the parliamentary process."[240] This has been the Government's standard response since the bill was first introduced in 2007 and amended in 2008. The failure to implement a substantial and effective witness protection program continues despite this particular gap being highlighted as

[239] Joint Civil Society Statement is available at: http://goo.gl/II4OMk
[240] See UK FCO (2014) Human Rights and Democracy report - Sri Lanka available at: http://goo.gl/bk9I7A

long ago as 2008 during the Commission of Inquiry into Serious Human Rights Violations set up by President Rajapaksa and overseen by an eleven nation International Independent Group of Eminent Persons.

However, one must be very cautious about believing that the current bill, even if it becomes law, will in fact protect witnesses. Witness protection requires much more than a statement of intent, albeit one that is set out in legislation. Victims of human rights abuses and their families need to feel confident to come forward without a risk of retribution. Particularly in cases such as considered in this project, that are alleged to have been committed by members of the security forces upon detainees, confidence of witnesses will be hard to come by when the persons designated to protect them are members of the security forces, on short term secondment or otherwise. A climate in which victims generally feel able to do so will not exist until the Government of Sri Lanka convincingly demonstrates, and takes effective measures, to end the current climate of impunity.

## Conclusions

Sri Lanka has legal institutions, laws, and mechanisms that are capable of leading to the investigation and prosecution of members of the security forces who have and continue, with impunity, to abduct, torture and sexually abuse the country's citizens. However, the existence of the Emergency Regulations and the Prevention of Terrorism Act, and a failure and general unwillingness to use existing mechanisms to investigate and prosecute, lead to the creation of a culture of impunity. Continuing violations since the end of the civil war are part of a pattern of widespread and systematic conduct directed against an identifiable segment of (the Tamil) population, so as to amount to crimes against humanity. The failure to investigate and punish perpetrators is not a matter of lack of political will. Because of the widespread and systematic nature of the allegations and the repeated failure of the Government of Sri Lanka to take adequate steps to prevent the continuation or repetition of these violations or to investigate properly and bring the perpetrators to justice, the only reasonable inference is that the highest levels of the Government of Sri Lanka are complicit in these abuses and the climate of impunity that has been created. Another domestic Commission of Inquiry would only obstruct international processes which would offer a realistic potential of bringing perpetrators of torture and sexual violence in state custody, and those ordering these crimes, to account, thus deterring a repetition of such violations in the future.

"I have lost everything in my life. There is nothing more I can lose. So I will fight at least to prevent the same evil happening to other Tamil women."

Witness 9, Female

This legal analysis is based on the sworn testimony of forty recent survivors of torture and sexual violence in Sri Lanka. It indicates that the Government of Sri Lanka is today operating a policy of systematic and widespread torture, rape and sexual violence, well after the end of the civil war in 2009. The evidence gathered here points to the commission of crimes against humanity by the Sri Lankan security forces as recently as 2013 and 2014.

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