

International Human Rights Issue on Srilanka

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Abstract

This research paper sets resolute analyse this social process in country. it's argued that the prospects for peace ar higher than at the other time since the beginning of the armed conflict in 1983, as a result of the parties' considerations regarding the results of continuing conflict, also because the consequences of settlement, have changed. within the initial section of the article we have a tendency to demonstrate how ever the costs--militarily, financially and politically—for continuing the war have drastically magnified for the parties. moreover, with the involvement of the international community and therefore the special approach to the social process by the Wickremasing he government, the perceived risks concerned in a very peaceful settlement have attenuated. These parallel developments within the incentives structures of war and peace, make a case for the readiness of each primary parties to have interaction in serious efforts to unravel the protracted conflict. From this attitude, the roles of Norway as a intercessor, and therefore the Nordic countries as ceasefire monitors, ar analysed. The second section analyses the prospects for an answer, by gazing the reconciliation of positions that have taken place between the parties. the foremost obstacles, like the LTTE's intentions, the Muslim minority and divisions among the Singhalese community, also are mentioned. we have a tendency to finish the analysis with the observation that even if the prospects for as table, negotiated settlement between the adversaries seem promising, many issues associated with post conflict reconstruction and democratic development, ar possible to stay obstacles within the future.

Background of Research:

Since the late 1970s, Sri Lanka has been ravaged by a civil war pitting the Liberation Tigers of Tamil Eelam (LTTE) against the Sri Lankan armed forces. The LTTE was an armed group fighting for a separate Tamil state in the Northern and Eastern Provinces of Sri Lanka. It was widely condemned by the international community for their Recruitment of child soldiers and use of suicide attacks and was prescribed as a terrorist group in many countries. The conduct of both the armed forces and the LTTE during the last stages of the war, in which tens of thousands of civilians were killed in the final months,3 highlighted the urgent need for accountability for violations of international human rights law and international humanitarian law by both sides during the armed conflict.

Objective Of Research:

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

- This Research analyses allegations of severe rights violations in this region through the lens of international criminal law, in particular, with reference to crimes against humanity.

Research Terms of Reference (TOR):

The terms of reference for the research are as follows:

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

Research Methodology:

The purpose of this research methodology for the gathering of the information and evaluation of its credibility. It also explains choices made by the research in light of the mission's objectives and of security constraints faced by the researchers in the fulfilment of their mission.

- **Information Gathering:** Information gathering methods included the review of reports from different sources as well as interviews with victims, witnesses and other persons who could provide relevant information about the human rights situation in the Northern Province of Sri Lanka.
- **Credibility Evaluation:** The credibility of the information collected was thoroughly assessed by the research. Different methods of assessment were used, depending on the source of the information.

Review Of Literature:

- Article 7(1)(g) Of The Rome Statute is Rape
- Article 7(1)(f) Of The Rome Statute is Torture
- Article 7(1) (k) Of The Rome Statute is Other Human Acts
- Article 7(1)(e) Of The Rome Statute is Imprisonment
- Article 7(1)(a) Of The Rome Statute Is Murder

Chapterization

Introduction

Conflict arises between the Sri Lanka has been one of the greatest offenders in Human Rights violations. Being part of the Sinhalese majority, it could be easy for me to turn a blind eye towards the human right violators that are occurring within the Sri Lankan government, both militantly or politically. However, it makes me all the more indignant as to what's happening. It could be exactly right in telling that the Liberation Tigers of Tamil Eelam (LTTE) is one of the utmost human rights violators the world has seen but having said that so is the Sri Lankan government.

Chapter I

Contextual Elements of Crime Against Humanity

There are four contextual elements (known as *chapeau* elements) to establish a crime against humanity:

These are:

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

An Attack Pursuant To A State Plan Or Policy:

For underlying acts enumerated under article 7(1) of the Rome Statute to qualify as crimes against humanity, they must be part of an attack against any civilian population. In this presence of the policy elements can be gathered from the totality of the circumstances. Significant evidence includes actual events, political platforms or writings, public statements or propaganda programs and the creation of political or administrative structures.

Attack Directed “Against The Civilian Population”:

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

Widespread or Systematic Nature Of The Attack:

The term ‘widespread’ refers to both the large-scale nature of the attack and the number of resultant victims. The attack must therefore be “massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims” and the term ‘systematic’ refers to the “organized nature of the acts of violence and the improbability of their random occurrence”. The ICC jurisprudence does not define a set of criteria defining ‘systematic’.

Nexus between The Underlying Act And The Attack:

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

Chapter II

Credible Allegation of Crimes Against Humanity Against The Tamil Population Of The Northern Province

Rape and Any Other Form Of Sexual Violence Of Comparable Gravity:

Rape is listed as against the law against humanity in article 7(1)(g) of the Rome Statute. Components of the crime against humanity of rape and sexual violence square measure the following:

- The wrongdoer invaded the body of someone by conduct leading to penetration, but slight, of any a part of the body of the victim or of the wrongdoer with a sexual organ, or of the anal or reproductive organ gap of the victim with any object or the other a part of the body.
- The invasion was committed by force, or by threat of force or coercion, like that caused by worry of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a powerful atmosphere, or the invasion was committed against someone incapable of giving real consent.
- The conduct was committed as a part of a widespread or systematic attack directed against a civilian population
- The wrongdoer knew that the conduct was {part of|a a part of} or meant the conduct to be part of a widespread or systematic attack directed against a civilian population.

Factual Allegation:

- In May 2010, in Vavuniya, a Tamil woman in her late twenties was visited at home by five or six men in civilian clothes who asked her to accompany them at the police station. They told her that they were police officers and wanted to record her statement. As soon as they reached the police station, she was handcuffed and pushed into a cell. Late at night, she was brought into a room where she was questioned about her husband's links with the LTTE. She was beaten with a stick across her legs and back. Later that night, four persons forced her into a van and took her to a house where she was asked to identify two men. Later a man in civilian clothes came to the room where she was kept, tore her clothes and raped her. A second person burnt her breasts, inner thighs and legs with a cigarette, and also raped her. Both beat her and bit her breast and thighs. She was brought back to the police station the next day. She started bleeding heavily. She believed she was pregnant and that the rapes induced a miscarriage.
- In February 2010, in Kondavil, Jaffna, a Tamil woman in her late twenties was at her home when, at about 11 pm, a white van stopped outside. Five men in civilian clothes entered her house and two of them dragged her out and into the van. She was gagged, blindfolded and handcuffed. She was taken in a room in a building and was accused of being in the LTTE cultural wing. The following day, she was beaten with the back of a rifle until she signed blank sheets of paper. That night, a senior officer who was present during the beating came in the room where she was locked, pushed her on the ground, kicked and beat her, tore her clothes off and raped her by vaginal penetration.

Torture

Torture could be a crime against humanity in article 7(1)(f) of the Rome Statute and is outlined by article 7(2)(e) as: [t]he intentional infliction of severe pain or suffering, whether or not physical or mental, upon an individual within the custody or below the management of the accused; except that torture shall not embody pain or suffering arising solely from, inherent in or accompanying, lawful sanctions.

Elements of the crime against humanity of torture area unit the following:

- The culprit inflicted severe physical or mental pain or suffering upon one or a lot of persons.
- Such person or persons were within the custody or below the management of the culprit.

- Such pain or suffering failed to arise solely from, and wasn't inherent in or accompanying, lawful sanctions.
- The conduct was committed as a part of a widespread or systematic attack directed against a civilian population.
- The culprit knew that the conduct was {part of|a a part of} or supposed the conduct to be part of a widespread or systematic attack directed against a civilian population.

Factual Allegation:

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

Other Inhuman Acts

Other cruel acts of an identical character by design inflicting nice suffering, or serious injury to body or to mental or physical health is listed as a criminal offense against humanity in article 7(1) (k) of the Rome Statute.

Components of the crime against humanity of different cruel acts ar the following:

- The culprit inflicted nice suffering, or serious injury to body or to mental or physical health, by means that of AN cruel act.
- Such act was of a personality almost like the other act spoken in article seven, paragraph one, of the Statute.
- The culprit was responsive to the factual circumstances that established the character of the act.
- The conduct was committed as a part of a widespread or systematic attack directed against a civilian population.
- The culprit knew that the conduct was {part of|a a part of} or supposed the conduct to be part of a widespread or systematic attack directed against a civilian population.

Factual Allegation:

- On 16 June 2011, in Jaffna, several persons were severely beaten at a TNA meeting held in Alaveddy, in advance of local government elections. Army officers and troops walked into the meeting to disrupt and

cancel it on the pretext that no permission had been obtained for the meeting. The soldiers armed with poles nonetheless started attacking the participants. Some bodyguards of the TNA parliamentarians were severely injured. They were admitted to hospital with blood injuries caused by blunt force trauma to their heads and limbs.

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

Imprisonment

Imprisonment or alternative severe deprivation of physical liberty in violation of basic rules of jurisprudence is listed as against the law against humanity in article 7(1)(e) of the Rome Statute.

The elements of the crime of imprisonment are:

- The wrongdoer confined one or a lot of persons or otherwise severely underprivileged one or a lot of persons of physical liberty.
- The gravity of the conduct was specified it had been in violation of basic rules of jurisprudence.
- The wrongdoer was responsive to the factual circumstances that established the gravity of the conduct.
- The conduct was committed as a part of a widespread or systematic attack directed against a civilian population.
- The wrongdoer knew that the conduct was {part of|a a part of} or supposed the conduct to be part of a widespread or systematic attack directed against a civilian population.

Factual Allegation:

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

Murder

Murder is listed as a criminal offense against humanity below article 7(1) (a) of the Rome Statute.

Parts of the crime against humanity of murder are:

- The wrongdoer killed one or a lot of persons.
- The conduct was committed as a part of a widespread or systematic attack directed against a civilian population.
- The wrongdoer knew that the conduct was {part of|a a part of} or meant the conduct to be part of a widespread or systematic attack against a civilian population.

Factual Allegation:

- A number of allegations of murders have been reported in the media and by human rights activists in Sri Lanka. The credibility of these allegations have been confirmed by several persons contacted during the research.
- In June 2012, two Tamil prisoners Ganesan Nimalaruban (age 28) and Mariyadas Delrukshan (age 34)—detained under national security law—died after being severely beaten by prison officials as punishment for their involvement in a prison riot. These two prisoners had participated in a riot in the Vavuniya prison on 28 June 2012. They were protesting their prolonged detention without charges. During the riot, prisoners held prison guards hostage. The guards were freed the following day by a rescue operation. After the operation, the prisoners were transferred from Vavuniya to Anuradhapura, where they were severely beaten by prison guards⁸. Ganesan Nimalaruban suffered severe injuries and was subsequently transferred to Mahara prison. Shortly thereafter, he was admitted to Ragama Hospital, where he died five days after the riot. Following his death, the authorities initially refused to release his body or allow him to be buried in Vavuniya, his hometown, citing national security concerns. Mariyadas Delrukshan was admitted to hospital in a coma and eventually died from his injuries.

Discriminatory Intent

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

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

Conclusion

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

Acknowledgement

This is to certify that this Doctrinal Research entitled “INTERNATIONAL HUMAN RIGHTS ISSUE ON SRILANKA” is a bonafide record of independent work done by Sumithra.M in a partial

fulfillment of the requirement for the degree of ll.b(hons) in during the academic year 2012 – 2017 under my guidance and supervision in the under graduate department of law, saveetha university, chennai – 117.

This research paper has not been submitted elsewhere for any other degree.

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