

# SOUTH ASIA MONITOR

A PERSPECTIVE ON, FROM AND OF INTEREST TO THE REGION

(/)

Powered by   
Society for Policy Studies

[Home \(/\)](#) / [Spotlight \(/spotlight\)](#)

/ [Between Treaty And Truth: Sri Lanka's Conflict-Related Sexual Violence And Limits Of International Law](#)

## Between Treaty And Truth: Sri Lanka's Conflict-Related Sexual Violence And Limits Of International Law (/spotlight/between-treaty-and-truth-sri-lankas-conflict-related-sexual-violence-and-limits)

Sri Lanka's case highlights the central weakness of the ICC's complementarity principle (<https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>). The Rome Statute grants jurisdiction only where states are *unwilling or unable genuinely to carry out the investigation or prosecution*. Sri Lanka maintains functioning judicial institutions, conducts some prosecutions, and has established reparations frameworks, thereby technically satisfying the *ability* threshold while systematically failing to deliver accountability for conflict-related crimes.



Jan 25, 2026



Representational Photo

The [January 13, 2026](https://www.ohchr.org/en/press-briefing-notes/2026/01/sri-lanka-report-conflict-related-sexual-violence), (<https://www.ohchr.org/en/press-briefing-notes/2026/01/sri-lanka-report-conflict-related-sexual-violence>) Office of the High Commissioner for Human Rights (OHCHR) report documenting Sri Lanka's conflict-related sexual violence marks not merely another chronicling of atrocities, but an inflexion point exposing the structural inadequacy of international accountability architecture. The report's central finding that sexual violence perpetrated by state security forces during Sri Lanka's 1983-2009 civil war constituted a *deliberate, widespread, and systemic pattern* potentially amounting to *crimes against humanity and war crimes* under the [Rome Statute](https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court) (<https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court>) presents a case study in how states navigate between rhetorical commitment to transitional justice and the operational reality of entrenched impunity.

What renders this report analytically significant is not the documentation of violations themselves, which United Nations (UN) mechanisms have established for over a decade, but rather its excavation of how domestic legal frameworks actively obstruct accountability while maintaining a veneer of compliance with international obligations. This contradiction illuminates a fundamental tension in public international law: the gap between states' treaty commitments and their domestic enforcement mechanisms.

#### Male-Victim Paradox and Gender-Neutral Frameworks

The report's finding that *men were as likely as women to have been victims* of sexual violence during the conflict challenges conventional gender persecution analysis. It exposes critical gaps in both domestic and international legal frameworks. While Article 7(1)(g) of the Rome Statute prohibits rape and sexual violence as crimes against

humanity in gender-neutral terms, Sri Lanka's [Penal Code](https://www.srilankalaw.lk/p/878-penal-code-ordinance.html) (https://www.srilankalaw.lk/p/878-penal-code-ordinance.html) under Section 363 does not recognise rape of men, creating a categorical legal impossibility for male survivors to access justice.

The report documents how male survivors endure permanent reproductive injuries and psychological trauma while facing statutory invisibility compounded by social stigma around male victimhood. Article 7 of the [International Covenant on Civil and Political Rights](http://the%20report%20documents%20how%20male%20survivors%20endure%20permane%20neutral%20terms%20and%20article%202(1)%20obligates%20states%20to%20take%20effe) (http://the%20report%20documents%20how%20male%20survivors%20endure%20permane%20neutral%20terms%20and%20article%202(1)%20obligates%20states%20to%20take%20effe) defines torture and cruel, inhuman, or degrading treatment without gender distinction. Likewise, Article 1 of the [Convention against Torture](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading) (https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading) defines torture in gender-neutral terms, and Article 2(1) obligates states to take effective legislative measures to prevent such acts. Yet Sri Lanka's domestic Penal Code renders these obligations operationally void for male survivors by categorically denying their legal capacity to be victims of rape.

The analytical significance lies in how this categorical exclusion transforms international treaty obligations into symbolic commitments. Sexual violence against men documented by UN mechanisms cannot be prosecuted as rape domestically, regardless of severity, transforming what should constitute crimes against humanity under international law into legally non-cognizable acts under domestic jurisdiction.

#### Evidentiary Vacuum And Command Responsibility Gaps

Sri Lanka's 20-year statute of limitations for sexual violence offences under Section 456 of the [Code of Criminal Procedure](https://www.srilankalaw.lk/c/217-code-of-criminal-procedure-act.html) (https://www.srilankalaw.lk/c/217-code-of-criminal-procedure-act.html) directly contravenes the Rome Statute's Article 29, which establishes that crimes within the International Criminal Court's (ICC) jurisdiction are not subject to any statute of limitations. This temporal bar has rendered all sexual violence committed before 2005 conclusively non-prosecutable, regardless of gravity or systematic nature. The OHCHR report documents that even for post-2005 violations, investigative delays routinely consume between 3 and 11 years before indictments, threatening to time-bar additional cases through administrative dysfunction.

More fundamentally, the report exposes how Sri Lanka's failure to prosecute under the command responsibility doctrine insulates the institutional architecture that enabled systematic violations. In the [1996 Chemmani case](https://www.lawnet.gov.lk/wp-content/uploads/2016/10/Law-Report-part-5-3.pdf) (https://www.lawnet.gov.lk/wp-content/uploads/2016/10/Law-Report-part-5-3.pdf), five soldiers were convicted for rape and murder, yet no officials in the chain of command faced investigation despite testimony indicating orders to rape and kill. This selective accountability pattern mirrors the [2015 Vishvamadu case](https://www.bbc.com/news/34470053) (https://www.bbc.com/news/34470053), where four soldiers initially convicted were [subsequently acquitted in 2019](https://www.tamilguardian.com/content/sri-lankan-court-acquits-soldiers-over-gang-rape-tamil-woman). (https://www.tamilguardian.com/content/sri-lankan-court-acquits-soldiers-over-gang-rape-tamil-woman)

These cases reveal a systematic evasion of the doctrine of command responsibility. When subordinates are occasionally prosecuted while commanders remain untouched despite evidence of orders or institutional enabling, the accountability framework targets individual perpetrators while insulating the command structure that authorised or tolerated violations.

Under [Rule 153](https://ihl-databases.icrc.org/en/customary-ihl/v1/rule153) (https://ihl-databases.icrc.org/en/customary-ihl/v1/rule153) of the International Committee of the Red Cross (ICRC) Study on Customary International Humanitarian Law and the Rome Statute's Article 28, commanders bear criminal responsibility for crimes committed by subordinates if they knew or should have known about such acts and failed to prevent or punish them. Sri Lanka's Attorney-General [retains prosecutorial discretion without external oversight](https://www.elibrary.imf.org/view/journals/002/2023/340/article-A001-en.xml) (https://www.elibrary.imf.org/view/journals/002/2023/340/article-A001-en.xml), creating a mechanism through which politically sensitive cases involving command responsibility can be administratively disappeared rather than judicially adjudicated.

### Transitional Justice Architecture Without Enforcement Mechanisms

The report's examination of Sri Lanka's 2018 [Office for Reparations Act](https://www.parliament.lk/uploads/acts/gbills/english/6107.pdf) (https://www.parliament.lk/uploads/acts/gbills/english/6107.pdf) reveals how symbolic legislative frameworks can coexist with operational failure. While the Act theoretically provides reparations for conflict victims, it has not disaggregated cases by gender nor provided interim or full reparations to sexual violence survivors. This mirrors broader patterns where states establish institutional apparatus that satisfies formal international scrutiny while remaining substantively inactive.

The comparative value lies in contrasting Sri Lanka's approach with [Colombia's Special Jurisdiction for Peace](https://peaceaccords.nd.edu/wp-content/uploads/2020/02/Colombian-Peace-Agreement-English-Translation.pdf) (https://peaceaccords.nd.edu/wp-content/uploads/2020/02/Colombian-Peace-Agreement-English-Translation.pdf), which adopted a *pattern-based investigation of macrocriminality* (https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1612&context=djcil) focusing on the most responsible actors and representative cases, rather than attempting comprehensive individual prosecutions. Colombia's framework recognises that transitional contexts require strategic prioritisation based on the gravity, representativity, and vulnerability of victims. Sri Lanka's failure to adopt such mechanisms, despite facing a caseload spanning 1985-2024, demonstrates how the absence of a prosecutorial strategy becomes indistinguishable from a deliberate lack of accountability.

### Complementarity Crisis And International Law's Enforcement Deficit

Sri Lanka's case highlights the central weakness of the ICC's [complementarity principle](https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf) (https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf). The Rome Statute grants jurisdiction only where states are *unwilling or unable genuinely to carry out the investigation or prosecution*. Sri Lanka maintains functioning judicial institutions, conducts some prosecutions, and has established reparations frameworks, thereby technically satisfying the *ability* threshold while systematically failing to deliver accountability for conflict-related crimes.

The OHCHR report documents 39 investigations into alleged sexual violence by Sri Lankan security forces following the conflict's end in 2009. By 2015, only one suspect remained in custody; the others had been discharged, acquitted, or granted bail. The government's failure to respond to the OHCHR's request for an updated case status highlights how States can comply with the procedural requirements of an investigation while ensuring substantive failure through evidentiary manipulation, witness intimidation, and the exercise of prosecutorial discretion.

President Anura Kumara Dissanayake's inaugural pledge, asking *if we fail to deliver justice, who else will?* (<https://www.presidentsoffice.gov.lk/the-full-speech-delivered-by-president-anura-kumara-dissanayake-at-the-inauguration-of-the-first-session-of-the-tenth-parliament/>), inadvertently captures this enforcement vacuum. Under current complementarity frameworks, the answer is *no one* when domestic failures remain below the threshold for triggering international jurisdiction.

### Toward Accountability Architecture Reform

The Sri Lankan experience demonstrates that effective accountability for systematic sexual violence requires not merely documentation but fundamental revision of how international law conceptualises state compliance. Three reforms merit consideration. First, expanding universal jurisdiction for crimes against humanity, regardless of the state's nationality or territory, as some European jurisdictions have pioneered. Second, developing intermediate accountability mechanisms between purely domestic prosecution and complete ICC referral, perhaps through regional human rights courts with criminal jurisdiction, could be considered. Third, establishing monitoring bodies with authority to suspend states from international institutions when systematic non-prosecution of documented violations persists.

The OHCHR report's value transcends its Sri Lankan context. It provides a forensic examination of how states can maintain international legitimacy through procedural compliance while ensuring substantive impunity through domestic legal architecture. Until international law develops enforcement mechanisms commensurate with its substantive prohibitions, the gap between treaty obligations and lived reality will continue to widen.

(The author is a lecturer at Jindal Global Law School, O.P. Jindal Global University, Sonapat, India. Views expressed are personal. He can be contacted at [bhavya.johari@jgu.edu.in](mailto:bhavya.johari@jgu.edu.in) (<mailto:bhavya.johari@jgu.edu.in>))

💖 SUPPORT INDEPENDENT THINKING / DONATE TO SAM  
(<https://southasiamonitor.org/donate-south-asia-monitor-0>)

## Post a Comment

Your name