

Fact Sheet

Legal background: war crimes and crimes against humanity

Applicable law

The ICEP report, *Island of impunity?* identifies the legal framework applicable to the conflict in Sri Lanka. The conflict was a non-international armed conflict that commenced with the 'Black July' riots of 1983 and ended on or around 19 May 2009. Accordingly, the laws of war, international humanitarian law (IHL), are applicable. Sri Lanka is also a party to the major international human rights conventions, and so these have been applied and discussed where relevant. The incidents cited in the report show that, in many cases, it is reasonable to conclude that IHL and international human rights law were violated and these violations may constitute crimes against humanity or war crimes, or both.

War crimes

The term 'war crimes' refers to serious breaches of international humanitarian law for which the perpetrators may be held criminally liable as individuals. The victim is generally a civilian or member of the opposing party. ICEP's report primarily refers to the definition of war crimes as set out in *Rome Statute of the International Criminal Court* (ICC Statute).

If subjected to further investigation and proven in a judicial process, the incidents in this report could amount to war crimes. The alleged perpetrators of these crimes are, in most instances, members of the Sri Lankan Government Security Forces (Security Forces). However, members of the LTTE are also alleged to be responsible for serious war crimes.

Crimes against humanity

'Crimes against humanity' are crimes that, because of their scale or systematic nature, offend the conscience of humankind. They do not require any connection, or nexus, with an armed conflict. The definition of such crimes under the ICC Statute requires that the offence is part of a widespread or systematic attack directed against the civilian population, in furtherance of a State or organisational policy to commit the broader attack. There is also a requirement that the perpetrator had knowledge of the broader attack against the civilian population, although he or she need not necessarily be responsible for it. Article 7 of the ICC Statute sets out the acts that could occur in the context of crimes against humanity and the relevant conditions.

The ICEP report sets out the requisite contextual elements for crimes against humanity with respect to members of both the Security Forces and the LTTE. The report suggests that many of the incidents analysed may amount to crimes against humanity.

Alternative characterisations of crimes

Although ICEP has generally considered each incident in relation to one or two crimes, this does not preclude the possibility that the same acts may constitute several or different crimes. For example, the acts constituting the war crime of using, conscripting or enlisting children may also constitute the war crime of cruel treatment. Similarly, the acts constituting the crime against humanity of persecution, could constitute genocidal acts if the additional requisite elements for this crime are found to be present through further investigation.