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Abstract: Why do governments and militaries publicly condemn and prosecute particular forms of abuse? This article explores the Sri Lankan government's decision to promote limited legal accountability for state-perpetrated rape committed in a country otherwise renowned for widespread impunity. We argue that rather than representing a turn against impunity, the symbolic stance against conflict-related sexual violence in a small number of high profile cases served an explicitly politico-military agenda. The state deployed legal accountability in specific cases to garner political legitimacy among key domestic audiences. The Sri Lankan government drew on the symbolism of female victimhood to mobilize support at a time when support for military counterinsurgency was waning. We show that governments can uniquely instrumentalize sexual violence cases to establish moral authority and territorial legitimacy. Through an examination of the domestic legal response to state-perpetrated human rights abuses we illustrate the many ways in which women's bodies – and the law – can be mobilized in war to serve military ends.

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Title: Deploying Justice: Strategic Accountability for Wartime Sexual Violence

On August 6, 1996, members of the Sri Lankan security forces detained Tamil schoolgirl Krishanthi Kumaraswamy at an army checkpoint in Jaffna, then gang-raped and murdered her. When her mother, brother, and a neighbor arrived in search of her they were also killed. The army initially insisted that none of the four victims had ever been at the checkpoint. But soon after, President Chandrika Bandaranaike Kumaratunga ordered the military police to investigate the incident. Officials located the four bodies in shallow graves near the checkpoint and arrested on-duty personnel. The Colombo High Court prosecuted eight soldiers and one policeman for charges of rape and murder. The trial dragged on for nearly two years, but ultimately a panel of three judges found six of the accused guilty and sentenced them to death (High Court of Colombo 1997).¹

¹ Two other police officers were given immunity for their involvement in exchange for their testimony.

The international community, together with Colombo civil society, welcomed the outcome. In a rare departure from its usual criticism of Sri Lanka's human rights practices, the US State Department's 1997 Human Rights Report commended the country's legal system for its objective and impartial pursuit of accountability:

There was no attempt, as in the past, to use the [Emergency Regulations] to cover up security force misdeeds. Through its rulings, the judiciary continued to exhibit its independence and uphold individual civil rights (U.S. Department of State 1997, 1).

Ms. Kumaraswamy's case defied local and international expectations. It was one of the first instances worldwide of a domestic government prosecuting its own security forces for wartime rape.² In the mid-1990s, legal attention to conflict-related sexual violence remained rare, particularly from governments implicated in such acts. The case is also one of the few, and earliest, instances in which the Sri Lankan government prosecuted members of its own forces for crimes committed against Tamils during the war against the separatist Liberation Tigers of Tamil Eelam (LTTE).³ A culture of entrenched impunity created an almost total lack of accountability for government-perpetrated human rights violations (Cronin-Furman 2015, 107-56).

While few other state-perpetrated atrocities resulted in genuine legal remedy, the government pursued initial inquiries in at least 13 other high-profile cases of security force-perpetrated sexual violence in the same period. Some of these inquiries resulted in charges and arrests. What explains the unusually swift and effective legal response to Ms. Kumaraswamy's rape and murder against a backdrop of otherwise rampant impunity? What can the Sri Lankan government's investigations (or lack thereof) into other state-perpetrated human rights abuses tell us about state prohibition, condemnation, and punishment of violence perpetrated during active conflict?

² The 1998 judgment in the case of Jean-Paul Akayesu by the International Criminal Tribunal for Rwanda—the first time that rape was tried as a crime of genocide—only just preceded the ruling by Colombo's High Court. Yet, the Akayesu judgment came from an international, not a national, court. The Rome Statute of the International Criminal Court—the first international human rights instrument to explicitly criminalize rape as a war crime and a crime against humanity—only entered into force in 2002, after Ms. Kumaraswamy's case.

³ In 2015, one soldier was sentenced to death for his role in the 2000 Mirusuvil massacre (*Daily Mirror* 2015, 1). The government also secured convictions against some of the police officers responsible for the 2003 Bindunuwewa massacre, but they were overturned in 2005 (BBC Sinhala 2005, 1). These are the only two instances of criminal convictions rendered against members of Sri Lanka's security services for abuses committed against Tamil civilians during the war.

We draw from colonial and post-colonial scholarship on women's victimhood as pretext for military expansion (see Fischer-Tiné and Mann 2004, 74-79; McClintock 2013, 232-58) and from theories of norm instrumentalization (see Hurd 2005; 2007) to argue that conflict actors can leverage legal accountability for sexual violence to justify and facilitate military violence. We suggest that the selective condemnation of wartime rape is often a strategic legitimacy-building practice adopted for military ends. Scholarship on the perpetration of sexual violence as an instrument of conflict (Cohen 2017; Hoover Green 2016; Wood 2006; 2009) tends to overlook how warring elites may weaponize the *condemnation* of sexual abuse. In the Sri Lankan case, the government strategically deployed legal accountability by instrumentalizing women's perceived victimhood and gendered protectionism norms at crucial turning points during the war. They did so to persuade Tamil civilians in the newly LTTE-occupied north-east that the government took security force-abuse seriously, and to demonstrate a strong law and order platform to war-weary constituents in the largely Sinhalese south.

We show that shifting trajectories of conflict can determine when and why human rights-violating governments strategically engage with international law and norms (Hurd 2005, 115-27; Goddard and Nexon 2016, 10, 13); why states might be responsive to certain human rights accusations and resistant to others; and, specifically, why states may be more likely to leverage accountability for cases involving allegations of sexual violence than for other abuses. In doing so, the state publicly condemned select instances of sexual violence to bolster support for military expansion.⁴ Deeply gendered constructions of victimhood makes such exploitation of sexual violence crimes particularly useful for wartime efforts to establish moral authority and territorial legitimacy (Crawford, Hoover Green, and Parkinson 2014; Fischer-Tiné and Mann 2004, 74-79).

Moreover, the extensive literature recognizing the possibility of strategic and instrumental uses of human rights (Goddard 2006; Hafner-Burton and Tsutsui 2005, 1383-1389; Hafner-Burton, Tsutsui, and Meyer 2008; Hurd 2005, 115-27; Schimmelfennig 2001, 62-76) usually sidesteps why some human rights abuses, but not others, engender domestic legal responses.⁵ Previous scholarship emphasizes the importance of non-military instruments – namely, norms and rule of law - as tools of influence and legitimacy in state power politics (Goddard and Nexon 2016;

⁴ See Viterna (2013) for a discussion of how non-state armed groups use similar tactics.

⁵ While scholars such as Carpenter (2003; 2007) examine why certain norms gain global salience, few examine how governments' selective engagement with specific laws and norms shape broader landscapes of violence and conflict.

Goddard 2009, 115-26; Hurd 2005). We suggest that conflict actors can deploy human rights law and norms as part of a larger arsenal of counter-insurgency tactics to justify and legitimate claims to rightful governance and territorial control. We therefore advance a theory of the instrumentalization of law and sexual violence simultaneously, through the strategic pursuit of human rights accountability for politico-military ends.

We support these arguments using a case study of human rights abuse and accountability during the Sri Lankan civil war. We draw from original research conducted over seven trips to Sri Lanka between 2011 and 2017 to investigate patterns of accountability in several high-profile human rights cases. We collate details of sexual violence cases that the Sri Lankan legal system engaged with between 1996 and 2006. We document the incentives and conditions that shaped executive and judicial action at each stage of the legal process. We interviewed legal experts, human rights practitioners, women's rights organization members, international stakeholders, and victim communities in sites where atrocities were committed. We draw from archival sources to supplement our in-country research, including official court records, case files, documents from Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC), Sri Lankan legal archives, and secondary literature by Sri Lankan scholars.

We begin by synthesizing our theoretical claims in two parts. Our empirical sections offer a brief overview of the Sri Lankan civil war, summarize the 14 cases we investigate, and present our analysis of the government's responses to each.

Sexual Violence and Law in Conflict

We know surprisingly little about when and why elites prohibit sexual violence and penalize its perpetrators. Recent scholarship shows that militaries are able to prevent opportunistic sexual violence when they exhibit high levels of discipline and organizational control over rank-and-file cadre (Hoover Green 2016, 623; Wood 2009, 136-42). However, with some important exceptions (e.g., Cohen 2016, 19-31), many studies take as given that military elites would prefer to prevent unfettered sexual violence but lack the means or capacity to do so.

Some emphasize the importance of international pressure and global norm diffusion to explain government preferences for protecting human rights, (Cronin-Furman 2015; Jo 2015, 52-82; Risse, Ropp, and Sikkink 2013, 10; Sikkink 2011, 96). A number of scholars argue that these forces specifically explain policies to prohibit or constrain sexual violence (Carpenter 2003, 663-

67; Ferdowsian, Mishori, and Naimer 2016, 1; Lake 2014b, 6). However, these arguments cannot satisfactorily explain developments in Sri Lanka. In the mid to late 1990s, the prohibition on sexual violence in conflict had only recently emerged as a matter of serious international concern (Kennedy-Pipe and Stanley 2000, 71-76).

Widespread gendered violence in Rwanda and the former Yugoslavia during this period prompted international courts and human rights organizations to take sexual crimes in conflict seriously. But states did not feel the repercussions of these developments until the adoption of UNSC-R 1325 in 2000, the entry into force of the Rome Statute in 2002, and other targeted global initiatives of the subsequent decade (Olsson and Gizelis 2015; Oudraat, Kuehnast, and Hernes 2011, 3, 19, 29-32; Tripp, Ferree, and Ewig 2013, 11).⁶ In the late 1990s, militaries around the world continued to perpetrate widespread sexual violence with impunity. Sexual violence escaped attention or even acknowledgement from the governments of many offending countries, and accountability outside of international courts was rare.

Civil society mobilization and domestic pressure from local women's organizations goes further in explaining accountability responses in Sri Lanka. Local mobilization around human rights norms can force states to respond because they fear the political consequences of inaction (Cardenas 2010, 8, 12, 17-36; Simmons 2009, 257). Activists marshaled considerable opposition to gendered atrocities in Sri Lanka. However, domestic pressure alone cannot explain the state's legal responses. This is because mobilization was not unique to cases involving sexual violence, or to the incidents taken up by governments. The victim community and Colombo civil society responded with similar outrage and mobilization to numerous other abuses of human rights during and after the war, to little effect (Cronin-Furman 2015, 107-56).

Thus, the Sri Lankan government's responses to a spate of sexual violence cases in the late 1990s and early 2000s offer an inroad for examining how and why rights-violating regimes deploy human rights law in pursuit of domestic accountability. We posit that the Sri Lankan government selectively exploited gendered constructions of victimhood to shore up waning local support across

⁶ UNSC-R 1325 recognizes how conflict disproportionately affects women and children. The United Nations' growing emphasis on women in conflict throughout the 2000s spawned considerable repercussions for the domestic treatment of gender violence. Important measures include the creation of a Special Representative of the United Nations' Secretary General on Sexual Violence in Conflict, a United Nations Special Rapporteur on Violence Against Women, the introduction of UN Women, and the targeted work of a variety of other UN agencies dedicated to women, peace and security. Prior to 2000, international activism around women's rights heavily influenced domestic politics in peacetime, but international organizations largely ignored the targeting of women in conflict until events in Rwanda and the former Yugoslavia.

ethnic, political, and geographic lines. It did so in the face of considerable wartime challenges. Threats to the government's legitimacy during this period account for its episodic engagement with emerging norms surrounding wartime rape. This case elucidates why governments engaged in territorial wars might respond proactively to certain human rights concerns while leaving others unaddressed.

In the sections that follow, we first explore how conflict actors instrumentalize law and norms as tools of strategic legitimation. We show how states deploy law – even against their own troops – in support of military objectives during conflict. We then explain why sexual violence is uniquely exploitable for these ends (Kirby 2013, 799-801; Meger 2016, 151). We demonstrate how conflict actors can leverage gendered victimhood to support expansionist violence.

Scholarship on power politics suggests that “actors in global politics deploy norms and meanings to influence the behavior of others,” often in ways that reinforce their legitimacy (Goddard and Nexon 2016, 8; Goddard and Krebs 2015, 9-12; Hurd 2005, 115-27). Selective engagement with international norms can thus be strategically powerful for states. For example, states can invoke human rights laws and norms to justify policy. This can bolster perceptions of legitimacy, thereby permitting states to advance their national interests (Hurd 2005). While this scholarship helps explain the importance of norms in implementing grand strategy (Goddard and Krebs 2015, 14; Krebs and Jackson 2007, 45), and for state rise and expansion (Goddard 2009, 112), it neglects legal mobilization during conflict.

A separate literature advances the concept of ‘lawfare’ to connote the use of law as a weapon of war. For example, many states adopt and implement anti-terror legislation to detain enemy combatants indefinitely without trial and subject them to enhanced interrogation techniques. However, while the lawfare literature explicates the broader relationship between law and conflict, it overlooks how actors can strategically deploy legal action against their *own* forces to advance military goals (Simmons 2016).⁷ We integrate the lawfare and power politics literatures to illuminate the Sri Lankan case dynamics. We show that shifting trajectories of conflict can determine when and why human rights-violating governments strategically engage with

⁷ We join Loyle and Binningsbø (2016) and others in noting that, while armed conflict is ultimately about violent interaction between combatant groups, groups pursue variety of policies in conjunction with violence that contribute to the course of the conflict and its outcomes (Binningsbø, Loyle, Gates, and Elster 2012; Lake 2017; Loyle and Binningsbø 2016; Simmons 2016). These may include the use of judicial and quasi-judicial processes to advance political or military goals.

international law and norms (Hurd 2005, 115-27; Goddard and Nexon 2016, 10, 13); why states might be responsive to certain human rights accusations and resistant to others; and, specifically, why states may be more likely to leverage accountability for cases involving allegations of sexual violence than for other abuses.

Our theory foregrounds sexual violence condemnation as uniquely exploitable for legitimacy-seeking gains. Scholars extensively document the use of rape and sexual violence for politico-military objectives in wartime. Researchers have also examined armed combatants' strategic victimization of civilians (Weinstein 2007, 6-9; Wood 2010, 601-14); variation in the use of sexual violence in conflict (Cohen 2013; 2016, 19-31; Hoover Green 2016, 623; Leiby 2009; 2015; Loken 2017; Wood 2006; 2009, 136-42); and legal accountability for wartime sexual violence (Askin 1999; Campbell 2007; Lake 2014a; 2014b). Some security forces commit these abuses opportunistically. Rape and other forms of violence can motivate or build morale among poorly regulated, weakly disciplined, or ill-treated troops (Enloe 2000). Often referred to as 'spoils of war,' sexual violence can provide outlets through which soldiers feel that they can regain their sense of dignity and strength (Baaz and Stern 2010, 30-35; Baaz and Stern 2011, 575). For these reasons, military hierarchies may implicitly or explicitly permit sexual predation.

Militaries and governments may also perpetrate sexual violence strategically. As Yuval-Davis (1997, 2) argues, conflict actors perceive women to "reproduce nations," biologically, culturally, and symbolically. Thus, women may be uniquely exposed to strategic harm during identity-based conflicts (Sjoberg and Peet 2011, 167). Armed groups may target women to undermine their position as the symbolic carriers of history, culture, and national memory. For example, during the Partition of India, factions imprinted nationalist or religious messages on out-group victims of sexual attacks (Butalia 1993, 14-15). Some perpetrators aim to pollute identity categories: Serb forces raped Bosniak women in the former Yugoslavia with the intention of attacking 'Bosnia' itself (Berry 2018: 110 - 119). Sexual attacks can further impugn men's honor by demonstrating the patriarch's inability to protect 'his' women (Sjoberg and Peet 2011, 167, 170; Skjelsbaek 2001).

Actors in violent conflict also use female purity and victimhood as pretexts for militarized intervention (Enloe 2000; Sjoberg 2013, 195, 199-200; Sjoberg and Via 2010). For example, colonial states invoked the perceived mistreatment of indigenous women at the hands of purportedly 'savage' husbands and fathers as justification for imperial expansion (Comaroff and

Comaroff 2006, 6-9; Fischer-Tiné and Mann 2004, 74-79; McClintock 2013). Western states justify intrusions into intimate aspects of non-western lives through the need to protect vulnerable women and children from the perceived barbarism of practices such as female genital cutting, forced marriage, polygamy and bridewealth (Boyle 2005, 1-79; Shell-Duncan and Hernlund 2000, 1-39; Thomas 2003, 21). Feminist scholarship consistently directs attention towards the symbolism of women's bodies in expansionist or territorial conflicts. Women are disproportionately categorized as vulnerable 'civilians,' and are therefore often protected in ways that men are not (Carpenter 2005, 295-334; Sjoberg and Peet 2011, 172).

Armed organizations and militaries instrumentalize this gendered division to demonstrate legitimacy in two ways. First, it allows them to convey moral superiority in their commitment to defending women. Second, it signals that actors are materially more capable of offering protection and punishing perpetrators of violence. Consequently, sexual violence prosecutions can serve to highlight the barbarism – and therefore the illegitimacy – of military adversaries.

We bridge the literature on human rights law and norms and sexual violence scholarship to demonstrate how governments can use sexual violence prosecutions against their own forces to advance conflict-related objectives. Specifically, we explore the Sri Lankan government's strategic deployment of human rights accountability, and the instrumentalization of women's perceived victimhood in war, through the *timing* of government action and inaction; the *types* of cases that received government and public attention and condemnation; and the *distinction* drawn between wartime sexual violence and other harms. We demonstrate how pursuing human rights prosecutions within one's own ranks can showcase integrity, morality, and judicial authority (Jackson and Rosberg 1982, 2, 12; Huang 2016, 83). We further illustrate that the gendered imagery that the state invoked in the Kumaraswamy case was the same imagery that enabled other equally egregious crimes to go unpunished. While civil society, the media, and the government portrayed Ms. Kumaraswamy as a 'genuine' victim worthy of intervention, state officials portrayed other sexual assault victims as terrorists undeserving of state protection. These dynamics emphasize the importance of examining both government action and inaction in human rights engagement.

Sexual Violence and the Limited Pursuit of Accountability in Sri Lanka's Civil War

Why did the government selectively pursue accountability in wartime sexual violence cases? Over the course of 26 years, five successive Sri Lankan administrations fought a brutal war against the LTTE. The conflict grew out of politicians' post-independence exploitation of the Sinhalese/Tamil ethnic divide to capture the majority Sinhalese community's vote (Rasaratnam 2016, 133-64). These ethnic outbidding efforts cast the Tamils as outsiders, a threat to the island's Sinhala-speaking, Buddhist identity. The 1956 passage of the Sinhala Only Act crystallized these dynamics, effectively reducing monolingual Tamil-speakers to second class status. Educational quotas soon followed, restricting Tamils to a share of university places proportional to their demographic representation. The increasingly inflammatory political rhetoric employed to advocate for and justify these policies engendered violence. Deadly anti-Tamil riots in 1956 and 1958 killed hundreds. By the 1970s, a critical mass of youth in the northeast believed that politics as usual could not protect the Tamil population. The state met their mobilization and early forays into violent action with harsh reprisals. In 1977 and 1983, the government used attacks on state forces by Tamil militants as pretext to launch vicious pogroms. 'Black July,' as the 1983 riots are known, was a watershed moment. Mobs massacred thousands of Tamil civilians with the Sri Lankan government's clear complicity. Thousands more fled abroad. Many who stayed took up arms, marking the official beginning of the war.

The war lasted until 2009 and exacted a heavy toll on civilians, particularly in the primarily Tamil-inhabited and LTTE-controlled areas of the northeast (Figure 1). The Sri Lankan military committed the worst abuses during their final onslaught against the LTTE in 2008-2009, but torture, disappearances, and extrajudicial killings were endemic throughout the conflict (Amnesty International 2017; Human Rights Watch 2008a). While the government committed the lion's share of violations, the LTTE employed suicide bombings against civilian targets, engaged in forced recruitment, and orchestrated ethnic cleansing of both Muslim and Sinhalese populations (Human Rights Watch 2008b; International Crisis Group 2007).

Figure 1 about here: Approximate distribution of territorial control in Sri Lanka in June 2005⁸

Scholars often cite the Sri Lankan civil war as a conflict in which actors infrequently employed rape (see Cohen 2013; Wood 2009). However, the comparatively low reported incidence of sexual

⁸ Map reproduced from Wikimedia Commons under a Creative Commons License.

violence does not evince a culture of restraint on the part of state forces. While the LTTE engaged in ruthless discipline and enforced a zero-tolerance policy for rape,⁹ when state forces had control of Tamil bodies they routinely committed sexual violence (International Crisis Group 2011; Cronin-Furman 2015). This was particularly true during the mid-1990s when “population movement in government-controlled areas was heavily restricted, and women regularly had to pass through checkpoints” (International Crisis Group 2011, 9).

The Sri Lankan government’s default response to allegations of human rights abuses has been consistent denial. Clear and compelling evidence exists of systematic attacks on civilian populations at the end of the war (United Nations 2011), and of custodial torture, disappearances, and extrajudicial killings throughout the conflict (Cronin-Furman 2015). Still, successive administrations have refused to investigate or prosecute more than a handful of offenses. Despite persistent demands from the victim community, local human rights organizations, and international audiences, criminal accountability for state-perpetrated abuses of Tamil civilians is virtually non-existent.

Impunity, however, does not always mean inaction. The frequency with which Sri Lankan regimes empanel weak bodies to investigate human rights abuses is an in-joke among domestic and international civil society (see, for example, Amnesty International 2009). And while the state investigated a short list of high profile civil war massacres, and prosecuted a shorter list, only a single, low-ranking soldier was convicted and punished.¹⁰ The government’s continuous response to accountability pressure, regardless of the administration in power, has been hand-waving and window-dressing (Cronin-Furman 2015, 107-56).

The conviction of six security force members in the Kumaraswamy case was therefore a high-water mark for accountability for state violence committed during Sri Lanka’s civil war. Against a backdrop of near-total impunity, the severity of the penalties imposed is puzzling. But the Kumaraswamy case was in fact the progenitor of a trend. We document government responses to 13 other high-profile incidents in which members of the security forces committed sexual

⁹ Detailed documentation of human rights abuses substantiates the LTTE’s assertion that its combatants largely refrained from sexual violence. Wood (2009) highlights a minority of isolated incidents of LTTE-perpetrated sexual abuse discusses the group’s punishments. In 1991, the group laid out five goals including the “legal protection against sexual harassment, rape, and domestic violence” for women (Gonzalez-Perez 2008, 64).

¹⁰ In 2015, the soldier was sentenced to death for killing 8 civilians in a 2000 massacre in Mirusuvil.

violence against Tamil victims.¹¹ In each, the government initiated criminal inquiries that often proceeded to arrests and/or indictments (Table 1). We group cases by the degree of legal action pursued: those in which charges were filed, in some cases leading to the commencement of criminal trials; those in which members of the security forces were arrested but never charged; and those in which inquiries were pursued but never led to arrests. While none except Ms. Kumaraswamy's case resulted in convictions in the timeframe of our study, these formal legal proceedings represent a departure from the quasi-judicial approach that the Sri Lankan government usually employs in response to human rights violations. We suggest that these interventions form a pattern of state instrumentalization of sexual violence to leverage law and gender norms for legitimacy gains.

Table 1: Government interventions into state-perpetrated sexual violence cases

Victim	Incident year	Maximum legal action pursued as of 2018
Krishanthi Kumaraswamy	1996	Prosecutions and convictions
Rajani Vellauthipillai	1996	Charges filed and suspects indicted
Arumaithurai Tharmaletchumi	1996	Charges filed and suspects indicted
Velan Rasamma	1997	Suspects arrested
Velan Vasantha	1996	Suspects arrested
Murugesapillai Koneswary	1997	Executive inquiry
Farheen Ida Carmelita Laila Figerardo	1999	Suspects arrested
Sarathambal Saravanbavananthakurukal	1999	Executive inquiry
Yogalingam Vijitha	2000	Executive inquiry
Thambipillai Thanalakshmi	2001	Suspects arrested
Sivamany Sinnathamby	2001	Trial begun
Wikijala Nanthakumar	2001	Trial begun
Velu Arshadevi	2001	Initial trial proceedings begun
Sathasivam Rathykala	2001-2002	Executive inquiry

Charges filed, or proceedings commenced

The government indicted Sri Lankan security forces on criminal charges for sexual violence against Tamil women in seven other instances during the civil war. About a month after Krishanthi Kumaraswamy's death, Sri Lankan Army soldiers manning a checkpoint at Kondavil on the Jaffna

¹¹ We are concerned with the government's response to sexual violence employed in the context of the conflict that could reasonably be interpreted as war crimes; that is, sexual violence committed against civilian women by members of the security forces during their operational duties.

Peninsula detained Rajani Vellauthipillai. In front of witnesses, the soldiers dragged her into a nearby house where they raped and murdered her. Police arrested six Army personnel following outcry by the local community and the press over the lawlessness exemplified by this and the Kumaraswamy case. The High Court of Colombo eventually indicted four suspects. Indictments were similarly issued in the case of Sivamany Sinnathamby and Wikijala Nanthakumar (known as ‘The Mannar Women’s Case’). In 2001, police and Navy officials in Mannar arrested the women, raped and tortured them, and forced them to falsely confess to being LTTE members. An initial examination by the local Judicial Medical Officer failed to confirm rape. Later, the women said that police warned them not to consent to a physical examination. Following widespread protests in the Northeast, Kumaratunga ordered an investigation.

Charges were also filed in the case of Velu Arshadevi, who security forces manning a checkpoint in Colombo raped in 2001. She identified three police officers and three Army members as participants in the attack and filed a fundamental rights petition (a non-criminal proceeding) with the Supreme Court. In 2002, the court awarded her compensation in a landmark decision recognizing that custodial rape constitutes torture. There was substantial outcry from the Sinhalese public, outraged that such a thing could happen in Colombo.¹² The accused were committed to stand trial before Colombo’s High Court.

None of these cases proceeded to a verdict. In Velu Arshadevi’s case, the perpetrators were never prosecuted. In the Mannar Women’s case, security forces and their supporters harassed the victims and threatened retaliation. They also harassed advocates and journalists who had taken up the Mannar Women’s cause. Ultimately, the Attorney General refused to pursue rape charges against the fourteen implicated security force members and instead indicted them under the Torture Act. The case finally went to trial in 2006, after being transferred to a court in a predominantly Sinhalese area, but it was stayed in 2008 when one victim fled the country and the other refused to testify. It is not clear when proceedings were halted in Rajani Vellauthipillai’s case, but it appears that no one was convicted or acquitted of her rape and murder.¹³

¹² Anonymous Interview, February 2017, Colombo

¹³ Although government sources have claimed that the perpetrators were convicted in this case (see, for example, *Daily Mirror* 2017) we were not able to confirm through our interviews or primary source research that a verdict was ever reached in this case. The trial was referenced as “presently pending” in the 2003 report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.

In the only case with a verdict other than Ms. Kumaraswamy's, the perpetrators of the rape, torture, and murder of Arumaithurai Tharmaletchumi were acquitted 20 years after her death. In 1996, members of the Army rampaged through the village of Kumarapuram, killing 26 people and wounding 24 others. They raped and murdered Ms. Tharmaletchumi. Although witnesses promptly identified eight perpetrators, no charges were filed until 2002, with another 14 years elapsing before the trial.

Despite the failure to secure convictions, the fact that the government filed charges against security forces in each case is remarkable. They are noteworthy given the usual refusal of the Sri Lankan government to recognize or acknowledge state-perpetrated human rights violations, and the rarity with which wartime rape was prosecuted anywhere in the world during this period.

Arrests of security personnel

There are three additional cases in which members of the security forces were arrested but never charged. The 1999 rape and murder of former LTTE cadre Farheen Ida Carmelita Laila Figarado in her mother's home received domestic and international attention comparable to the Kumaraswamy case. Like Ms. Kumaraswamy, security forces subjected Ms. Figarado to particularly brutal violence. The initial postmortem confirmed that she had been gang-raped and noted severe bite marks on her breasts and lip. It concluded that she died after being shot through the vagina (Kodikara & Emmanuel 2017, 8). Although the five perpetrators wore masks, eyewitnesses identified two of them as members of the Army. Forensic analysis later confirmed that the bullets used to kill her were Army-issued. The local police initially refused to register a complaint. Following pressure on the President's office by local activists, the executive opened an inquiry and a second autopsy was performed in Colombo. The police arrested two suspects. In Ms. Figarado's case, security forces subjected witnesses to such intense intimidation that by 2000, they had all left the country.

Similarly, in both the 1997 case of Velan Rasamma and her sister Velan Vasantha, and the 2001 case of Thambipillai Thanalakshmi, local police made arrests following executive intervention after their initial inaction. However, in both instances, they released the suspects and dropped the investigations when the victims failed to identify their attackers in an identification parade. No charges were ever filed, and the case never proceeded to trial.

Initial Inquiries

Finally, police launched investigations into several additional cases but never arrested or charged any perpetrators. One of the highest profile incidents was the 1997 rape and murder of Murugesapillai Koneswary. Sinhalese police officers attacked her in her home and then threw a grenade at her, apparently to destroy the evidence of sexual assault. The police later claimed that Ms. Koneswary had died in a shoot-out between state forces and the LTTE. The case triggered outrage from Tamil MPs, domestic women's groups, and international audiences. Under intense pressure, Kumaratunga publicly ordered an inquiry.

After Navy officers raped and murdered Sarathambal Saravanbavananthakurukul in 1999, community protests and international outcry led the local commanding officer to promise an investigation and Kumaratunga to order an inquiry to "report back to her immediately for deterrent action against the culprits irrespective of the ranks or status" (Rajendran 2000, 1). In the case of Sathasivam Rathykala, the Kumaratunga administration reported to the United Nations Special Rapporteur on Torture that the Attorney General was considering instituting criminal proceedings. The Criminal Investigation Department (CID) had detained Rathykala on suspicion of being LTTE and abused her in custody for nearly a year in 2001-2002. Likewise, in the case of Yogalingam Vijitha, the Attorney General's office indicated that it would prosecute the perpetrators under the Torture Act. The Supreme Court awarded Vijitha compensation for her torture and sexual assault by Negombo police after a false accusation of LTTE affiliation.

But in all four cases, as well as one other in which a lower-level inquiry was opened,¹⁴ the government's actions immediately undercut the promise of justice. In Ms. Koneswary's case, the investigation faltered following a failure to establish rape through medical evidence and police harassment of key witnesses. In Ms. Saravanbavananthakurukul's case, security forces immediately transferred the implicated suspects out of the area in an apparent effort to prevent their identification and arrest. Although Ms. Saravanbavananthakurukul's case was very high profile, with several politician and members of civil society attending her funeral in Colombo, the government arrested no perpetrators. In 2001, the Attorney General's office announced that they would not pursue prosecutions in Ms. Saravanbavananthakurukul's case due to a lack of evidence.

¹⁴ In the case of Rajeswary Krishnarajah's September 29, 1999 gang rape by members of the Army, local police submitted a report to the Jaffna Magistrates Court, but no one was ever charged, nor did the executive at any point evince an interest in the case.

Around the same time, the National Human Rights Commission also closed its investigation. In Ms. Vijitha's case, the government declared that it could not pursue the investigation because the victim had left the country and was unavailable to give a statement to police. It is not clear when the Attorney General dropped the investigation into Ms. Rathykala's case, but no arrests were made.

It is clear from these examples that the Sri Lankan government's actions by no means represent a genuine or comprehensive legal response to sexual violence. In most cases, the state left indictments pending and prematurely abandoned investigations after witnesses recanted or fled. In one of the only two cases identified above that proceeded to a full trial, the accused were not charged with rape. In the other, they were acquitted despite clear evidence of guilt.

Furthermore, the government did not undertake these inquiries as part of the normal functioning of the justice system.¹⁵ The evidence suggests that where inquiries were commenced, they were often initiated at an unusually high level of the executive. As one activist lamented with regards to the Koneswary case: "Why is it always necessary to approach the President each time? Why are there no proper mechanisms in place to which these issues could be addressed and a witness protection program be implemented in order that such crimes do not escape justice?" (Jansz 1997, 1). But the fact that approaching the President was repeatedly effective in prompting investigations demonstrates the government's interest in being perceived as responsive to cases of wartime sexual violence. As we demonstrate in the next section, the limited action pursued in these cases represents the strategic deployment of accountability in pursuit of deliberate politico-military gain.

Mobilizing Legitimacy

We argue that the state's interventions into wartime sexual violence cases do not reflect a genuine human rights response. Instead, we illustrate how the state exploited gendered beliefs about innocence and protectionism in sexual violence cases to establish moral legitimacy among members of the Tamil victim community and Sinhalese constituents in the south. This behavior evinces state instrumentalization of sexual violence through its condemnation. We offer evidence

¹⁵ In those instances where surviving victims were brave enough to file criminal cases on their own behalf (for instance, the cases of Sivasothy Krishnapillai, Poomany Saravanai, Mahendiran Nageswari, and Rajeswary Krishnarajah), the justice system inevitably failed them.

in support of these arguments in three parts. First, we show that the timing of these interventions is critical to understanding their motivation. Second, we demonstrate that the gendered construction of victimhood framed episodic state action and inaction in sexual violence cases. The same gendered imagery that enabled the prosecution and conviction of Sri Lankan security personnel in the Kumaraswamy case permitted incomplete accountability action in the other cases. Third, we use evidence of state-perpetrated sexual violence in the post-war period to demonstrate that highly publicized responses to ‘abhorrent’ crimes facilitate a division between ordinary and extraordinary violence. Drawing on the securitization and sexual violence literature, we show how state deployment of a targeted human rights response can deflect attention from other pervasive abuses.

The shifting trajectory of conflict and the timing of legal interventions

In 1994, Sri Lankans elected President Kumaratunga. Her opposition, the United National Party (UNP), was previously in power for nearly two decades and reinforced its rule with serious abuses of human rights. This included the disappearance and extrajudicial killing of dissidents. In the months preceding the election, LTTE suicide bombers assassinated both the UNP president and the party’s new presidential candidate. Kumaratunga campaigned on a platform of a peaceful end to the civil war and restoration of law and order. These promises resonated with the Sinhalese electorate, weary after over a decade of war with no end in sight. Sri Lankans elected Kumaratunga with 62 percent of the vote and a mandate to negotiate an end to the war.¹⁶

In the early years of her presidency, Kumaratunga took a more conciliatory approach towards the LTTE than did her predecessors. But by April 1995, peace negotiations failed. The administration shifted to a so-called ‘war for peace’ strategy and launched an all-out assault on the LTTE-held Jaffna Peninsula. The government regained control of the peninsula in December 1995 but was unable to end the insurgency. The LTTE retreated into the Vanni, the sparsely populated region between southern Sri Lanka and the Jaffna Peninsula, and regrouped. In July 1996, they won a decisive victory at Mullaithivu, seizing control of the town and the nearby army base. For the next six years, rebels and government forces traded territory with neither conclusively gaining the upper hand. The LTTE also stepped up its suicide attacks on civilian targets in the south,

¹⁶ In the LTTE-controlled Tamil areas in the north, fewer than 3% of the population voted (Election Commission of Sri Lanka 1994).

including an assassination attempt on Kumaratunga that left her blind in one eye. This phase of the conflict, known as Eelam War III, ended in December 2001 when the UNP and its allies won the parliamentary election and initiated peace negotiations.

Most government interventions into wartime sexual violence occurred under Kumaratuga. One explanation is that the primacy of emerging international norms in the mid-1990s drove this demi-accountability. Indeed, the Kumaratunga administration was deeply conscious of its international reputation. Having campaigned on a law and order platform, it was far more sensitive than its predecessor and successor to international criticism of its human rights record. As one expert confirmed in 2017, “the President at the time was susceptible” to international outrage.¹⁷ In both the Velan sisters and Koneswary cases, action followed Amnesty International Urgent Action Appeals. A journalist observing the Vijitha and the Mannar Women’s cases in 2001 noted, “the latest accusations have received comparatively extensive and sympathetic media coverage, indicating a concern in ruling circles over the impact internationally of the publicity surrounding the cases” (Silva 2001, 1). But the government initially took no action in Ms. Kumaraswamy’s case despite significant international engagement, including an Amnesty International campaign calling for justice. Rather, the Army simply “conducted a cursory investigation and announced that the four civilians had not been detained at the check point, even though dozens of civilians had witnessed it” (The Island 1998, 1). Thus, while international pressure likely contributed to prompting low-cost action, it cannot explain the entire spectrum of accountability behavior that the Kumaratunga administration exhibited in response to wartime sexual violence.

Kumaratunga’s government also failed to investigate or condemn other, more widely proscribed rights abuses despite significant international outcry. For example, in 1995 Sri Lankan Air Force planes bombed a church and, in a separate incident, a school on the Jaffna Peninsula. Security forces killed over 100 civilians in these assaults. Despite government agents’ clear culpability in both attacks, the military denied involvement and censored media reporting on the incidents. When news of the church bombing spread, Kumaratunga expressed “sorrow” at the loss of civilian life and asked the military to investigate itself before dropping the matter (Human Rights Watch 1995).

¹⁷ Lawyer Interview, Colombo February 2016.

Kumaratunga acted on few human rights abuses and on only a fraction of state-perpetrated sexual violence crimes. These actions were extremely limited. Thus, the targeted interventions into some types of abuse undermines the strength of diffusion-based explanations. Norms-based explanations fall short in advancing our understanding of *when* and under *what conditions* governments engaged in systematic wartime abuses might be inclined to engage in human rights rhetoric. Instead, the conflict's shifting trajectory explains the government's sporadic flirtations with sexual violence accountability. Throughout Eelam War III, the Kumaratunga administration was concerned with establishing its territorial control and legitimate claims to governance in northeastern Sri Lanka. A key objective was winning the loyalty of, or at least undermining the LTTE's ties to, the local Tamil population. But capturing the support of community members uncomfortable with the LTTE's rigid rule, or simply tired of the conflict, required the government to demonstrate that it could provide law and order. This was not an easy standard to meet. The LTTE rigorously policed its territory and enforced a strict policy against sexual violence. Impunity for gross, military-perpetrated human rights abuses, particularly sexual assault, alienated the Tamil community and incentivized support for the rebels (*The Sunday Times* 1996, 1).

The publicity surrounding Krishanthi Kumaraswamy's 1996 rape and murder came at an awkward time for the Kumaratunga administration. When the government retook the Jaffna Peninsula at the end of 1995, it believed the end of the war was in sight. But the loss of an army base and significant territory in Mullaitivu in 1996 demonstrated the insurgency's viability. Security forces' abduction and rape of Kumaraswamy in broad daylight and with the complicity of the checkpoint personnel made clear the government forces were not a guarantor of safety. This was disastrous for efforts to secure the loyalty of the Tamil population.

Thus, the government's feeble actions in sexual violence cases reflect the state's interest in maintaining a plausible claim that it was responsive to the Tamil community's demands while it struggled to undercut support for the insurgency. Government intervention often followed southern civil society or media amplifications of the community's calls for justice. Kumaratunga's decision to order an inquiry in the Murugespillai Koneswary case followed a protest march in Colombo by women's groups (*South Asia Media Services* 1997, 1). The casual brutality with which she was killed, and the security forces' attempt to blame the LTTE, sparked outrage across the island. This included coverage in the Sinhalese press. One editorial noted that the failure to credibly investigate the crime raised questions about "how sincere the government is towards

implementing and maintaining a credible record on human rights” (Jansz 1997, 1). In the Mannar Women’s case, Kumaratunga only ordered the second medical examination and subsequent investigation after widespread public outcry (The World Organization Against Torture 2002).

Press coverage at the time of Velu Arshadevi’s case reported that “because of Arshadevi’s difficult life — and her courage — her case has drawn sympathy for the cause of Tamil women in the island” (*Associated Press* 2001, 1). The state filed charges following an island-wide protest campaign (Silva 2001, 1). Investigations into the Saravanbavanthakurukul case came only after 500 villagers near Jaffna staged a protest (Rajendran 2000, 1). Villagers marched carrying signs that explicitly accused the military of the crime, exhibiting clear discontent with the government. Similarly, following the brutal rape and murder of Ms. Figierardo, 6000 women and girls in Mannar delivered a petition to Kumaratunga’s office (Briggs 2005, 97). It was only after this action that the government announced an executive inquiry.

Accountability behavior in each case reflects the government’s desire to balance the threat of losing Tamil support to the LTTE with the need to keep the Sinhalese audience sanguine. This occurred at a time when support for the war in the south was especially weak. While many Sinhalese voters assumed any atrocities in the northeast were the LTTE’s fault, there was a limit to their tolerance. The Kumaratunga administration was particularly eager to demonstrate to all audiences that territory recaptured from the LTTE was successfully reintegrated into Sri Lankan state control. Therefore, the administration concealed its human rights violations from the Sinhalese public. Following the recapture of the Jaffna Peninsula, the Deputy Defence Minister stated to parliament that “there was not a single rape incident during the recent military operations” (University Teachers for Human Rights 1996). But abuses by the security forces were endemic and the government had done little to prevent or punish them (Human Rights Watch 1995).

The limited nature of government actions demonstrate that its interest in signaling intolerance of sexual violence only went so far. It was not strong enough to induce the government to pay real costs, such as jeopardizing its relationship with the military, by more vigorously pursuing accountability. Domestic mobilization was also only effective when the government was facing very specific legitimacy threats in the context of its newly recaptured territory. To leverage sufficient public support for its offensive against the LTTE, the regime needed to demonstrate its capacity to deliver governance. However, the state selected its responses carefully. Only certain cases offered opportunities for targeted legitimacy-building across ethnic, political, and

geographic lines. The gendered manipulation of innocence and victimhood that afforded such opportunities is the subject of the following section.

Gendered innocence

The cases that generated legal responses were almost exclusively sexual violence cases. This is not a coincidence. At the height of the Sri Lankan conflict, sexual violence emerged as a rare issue condemned across ethnic lines. Several feminist groups emphasizing the “shared suffering of both Tamil and Sinhalese women” operated vocally during this period (Mittra and Kumar 2004, 285). Tamil women successfully mobilized their identities as mothers to promote ‘traditional family values’ in efforts to sympathetically engage Sinhalese audiences (de Alwis 2002; Mittra and Kumar 2004). Local communities and rights activists also mobilized the co-constitution of Tamil and Sinhalese women as “disseminators of ‘tradition,’ ‘culture,’ ‘community’ and the ‘nation’” and the underlying belief in female purity and gendered victimhood (de Alwis 2002, 676). These shared expectations made war-related sexual violence crimes appear particularly egregious.

Ms. Kumaraswamy’s unimpeachable innocence thus supplied an ideal vehicle for mobilizing public sentiment in service of state legitimacy. Press coverage of the Kumaraswamy case and the advocacy surrounding it emphasizes that she was a young schoolgirl on her way home from exams (*The Island* 1998, 1; *The Sunday Times* 1996, 1). One news article points out that her exam results, received posthumously, were excellent. The official court decision rejecting an appeal filed by her perpetrators reiterates her high marks: the judges specifically discuss her test scores (High Court of Colombo 2003). Like the 2015 rape and murder of Vidya Sivayoganathan (also an 18-year-old Tamil schoolgirl), her symbolic innocence and the crime’s brutality sparked sympathy across the island.¹⁸ The case engaged southern attention in a way that few other abuses of Tamil civilians did. One human rights report observed, “something so graphic and horrifying as the Krishanthi murder, if unaddressed, would have done immense harm to the Government’s tenuous credibility” (University Teachers for Human Rights 1999). The case also offered an ideal opportunity to shore up support for the war effort in the south by demonstrating the government’s capacity to maintain law and order. It further enabled the government to salvage some legitimacy in the northeast by evidencing its professed intolerance for state-perpetrated war crimes.

¹⁸ Interview, Colombo, February 14, 2017.

Ms. Kumaraswamy's rape and murder undermined the government's assurances to its southern audience that they conducted a humane counterinsurgency campaign. By early November, the English language press was covering the crime. They covered Ms. Kumaraswamy as a victim deserving Sinhalese sympathy, as an innocent young girl who had done nothing wrong. The first report to appear in the English language press was titled "And the Blossom Died." It referred repeatedly to Ms. Kumaraswamy's young age and "sweet smile" (Peiris 1996, 1). As a result of this sympathetic coverage, the cause "was picked up by Southern civil society groups, human rights groups and church groups" (Xavier 2012, 120). A broad cross-section of Colombo society attended vigils demanding government action in the Kumaraswamy case. Local interviewees remarked consistently that Ms. Kumaraswamy's status as young and innocent fueled this public outcry.

Sexual violence in this and a narrow profile of other cases proved uniquely exploitable for the government to assert itself as an accountable arbiter across multiple audiences. While cross-ethnic gendered norms and domestic mobilization made sexual violence a profitable issue for legitimacy-building, the government's most far-reaching interventions occurred in cases where victims appeared most sympathetic. The government could more easily ignore sexual crimes when they could paint women as gender deviants or LTTE terrorists. The state readily dismissed attacks on Tamils as legitimate assaults on insurgent targets. This was true regardless of public outrage. For example, the notorious Trinco 5 Massacre left five Tamil students dead on the Trincomalee Dutch Bay Beach in 2006. Despite mass protests by Trincomalee residents the day after the murders, the government took no legal action. Sri Lankan authorities initially claimed these students were "LTTE terrorists killed in a premature detonation of a grenade" (Sabry 2016, 1). The coroner strongly contradicted these claims, confirming that the students were killed by gunshot wounds in execution style. Villagers reported hearing the young men crying out for mercy before their deaths. Nevertheless, the government never pressed charges. Due to the profile of the victims – young men inhabiting an LTTE-controlled area – the army and the state media could effectively and easily portray the victims as terrorists to circumvent calls for justice (see, for example, Sabry 2016). Despite years of unrelenting advocacy and sustained international attention, investigations into the case have repeatedly stalled (Ross 2015, 1).

Because the LTTE's use of female combatants was well known, even female victims of violence could be easily dismissed as legitimate military targets. For example, the government did

not pursue an inquiry in the sexual assault of 14-year-old Thangiah Vijayalalitha and 19-year-old Vijayaratnam Subashini (Amnesty International 2002). The Sri Lankan Navy captured them in 2001 following a battle at sea. They were among a group of eleven on an LTTE vessel that Sri Lanka navy gunboats attacked. Security forces took them into custody along with seven other rebels. On the hours-long return voyage to Trincomalee, more than ten navy personnel sexually assaulted Ms. Vijayalalitha and Ms. Subashini (Amnesty International 2002). Security forces then detained them without charge at Welikade women's prison in Colombo. Despite considerable international pressure and the UN Special Rapporteur for Women's calls for accountability, police never investigated their case (United Nations Commission on Human Rights 2003). The government used their status as enemy combatants to indicate that they were unworthy of sympathy or protection. On the rare occasion that the southern press mentioned Ms. Vijayalalitha and Ms. Subashini, it was to celebrate their capture as a "prize catch" (*The Sunday Times* 2001, 1).

The Sri Lankan government paid similarly scant attention to security forces' extended rape and torture of Sathasivam Rathykala. Government agents accused her of being LTTE and kept her in custody for months. The Attorney General and the National Human Rights Commission received copies of the medical examination report detailing clear signs of sexual assault and severe trauma, Ms. Rathykala's ordeal drew little public comment and the investigation lapsed before any perpetrators were arrested or charged (Asian Human Rights Commission 2004). Gonsalves (2005, 41-42) observes that the masculine and androgynous imagery typically invoked in descriptions of LTTE women deprived them of their femininity and therefore their right to protection from the state. Quoting an article in the *Sunday Observer*, she highlights a popular depiction of LTTE women: "The short crop which slightly juts out of her Tiger cap makes her look boyish. Tall and lanky, her gait further accentuates her boyishness" (Gonsalves 2005, 41).

Even when cases sparked legal interventions, the state's ability to manipulate gendered expectations of innocence shaped most proceedings. In the Mannar Women's case, the government brandished false confessions of rebel activity as an excuse for their initial inaction on their brutal rape and torture. Navy personnel threatened the women with further sexual assault and torture unless they falsely confessed to being part of the insurgency (Amnesty International 2002). The District Medical Officer (DMO) did not take their claims seriously, and when the women refused an invasive exam the DMO marked that they had no sustained injuries (Ibid). When the women did complain of rape, one of the accused filed a petition claiming that the allegations were an LTTE

plot (*The Island* 1998; 2001). One news article at the time remarked that accusations of LTTE affiliation were being employed in “a crude attempt ... to discredit the women” (Silva 2001, 1).

In another example, policemen arrested Vijitha Yogalingam on suspicion of LTTE affiliation. They raped and tortured her in custody. Evidence suggests that her estranged husband had instigated her detention by falsely suggesting to the police that she was LTTE (Pinto-Jayawardena 2012, 1). She eventually signed a false confession and the state held her in custody for nearly a year. The police variously claimed that she had “received training in LTTE camps” or was “a member of the LTTE Suicide Squad” (Supreme Court of Sri Lanka, Paragraph 24). The government never prosecuted her persecutors and refused to follow through on its promise to press charges against them. The state argued – inaccurately - that charges could not be filed because Ms. Yogalingam fled the country (Ibid). In other cases, victims were indeed LTTE members whose involvement in the rebellion shaped observer perceptions of their abuse. For example, Ms. Figerado, whose case stalled in its early stages, was former LTTE and had recently surrendered to state forces before her assault and murder (Supreme Court of Sri Lanka 2001, Paragraph 24).

The changing landscape in the war’s aftermath altered the postwar government’s strategic concerns. The Sinhalese press in recent years have “started to rewrite [Kumaraswamy’s] story in interviews with some of the perpetrators, painting her a ‘terrorist’” (International Crisis Group 2011, 9). This shifting narrative demonstrates that protection from the law is often conditional on the believability of victims’ innocence and on the state’s desire to appease local populations. These cases further illustrate how conflict dynamics create incentives to instrumentalize accountability for politico-military gain. Domestic outrage, international pressure, the LTTE’s zero-tolerance policy for rape, and gendered victim characteristics made sexual violence a particularly effective vehicle for the government to engender political legitimacy during the war. By acting in select sexual violence cases, the Sri Lankan executive signaled moral superiority and juridical authority. It tapped into expectations of female victimhood and gendered innocence that evoked public sympathy among Sinhalese *and* Tamil audiences. This salience offered a crutch upon which the government could legitimize its law and order claims to governance in formerly LTTE-held areas.

Selective accountability and the securitization of wartime rape

The government's attitude towards other forms of gender-based violence during the conflict and its post-war response to sexual violence provides further evidence that wartime human rights

interventions were strategic. The state's focus on conflict-related sexual violence generated popular praise from international and domestic communities while shifting focus away from other – and often more common - forms of gender and non-gender-based violence that it created or ignored. Meger (2016) notes that the construction of gendered violence as a security threat often depends on the exclusion of 'everyday rape' and other forms of harm. The securitization of wartime rape thus creates "new hierarchies and forms of exclusion" (Aradau 2008, 16, cited in Meger 2016). As Kirby (2013) concludes, this political focus on some types of sexual violence flattens complex explanations for wartime abuse.

In Sri Lanka and elsewhere, government attention to very particular manifestations of conflict-related sexual violence distracts attention away from other abuses. This includes non-sexual crimes and other everyday gendered harms. Militarization of primarily Tamil areas, for example, disproportionately increased women's political and economic insecurity (Gowrinathan and Cronin-Furman 2015). It also contributed to a rise in gender-based violence within local communities (International Crisis Group 2011). By investing few resources in assisting female-headed households, re-settling or economically empowering internally displaced women, or investigating and prosecuting gender-based violence in the home, successive Sri Lankan governments have demonstrated their lack of concern for the gendered effects of conflict (de Mel 246-95). But feigning an interest in women's rights by selectively investigating a handful of state-perpetrated sexual violence cases allowed the Kumaratunga administration to bolster its conflict-related legitimacy while concealing other acts of wartime violence and pervasive trends of gendered abuse.

Successive post-war governments have also strongly rejected any need for accountability despite apparently high levels of sexual violence perpetrated against Tamil women during and after the final phase of the war. The evidence of these allegations is compelling and includes photographs and cell phone videos taken by members of the victorious military that show the naked and mutilated bodies of female LTTE members, their injuries a clear testament to sexual assault.¹⁹ Researchers document sexual violence in detention (Human Rights Watch 2013), IDP camps

¹⁹ The Sri Lankan government claims that these images are faked, but United Nations forensic experts authenticated them. The Special Rapporteur prepared a Technical Note on extrajudicial, summary or arbitrary executions, in relation to the authenticity of the "Channel 4 videotape."

(International Crisis Group 2011), and women's own homes and villages (Gowrinathan and Cronin-Furman 2015).

Further, human rights and medical reports document high rates of sexual violence perpetrated against male detainees during the war and in its aftermath (Peel, Mahtani, Hinshelwood, and Forrest 2000; Human Rights Watch 2013). The government commonly used sexual violence against male political prisoners and displaced persons detained during the conflict (Peel, Mahtani, Hinshelwood, and Forrest 2000). Approximately 21 percent of men referred to the Medical Foundation for the Care of Victims of Torture between 1997-1998 reported sexual abuse in state custody (Ibid). In the post-war period, human rights organizations report systemic rape and sexual abuse of men in detention (Human Rights Watch 2013). Despite credible evidence of sexual violence and consequent international outrage, no wartime or post-war administration has pursued inquiries or investigations into cases of male victims (Cronin-Furman 2017). This is added evidence that the limited wartime interventions into sexual violence cases were targeted towards those where gendered expectations offered legitimacy gains. These patterns suggest that the Sri Lankan executive demonstrated a strictly strategic interest in state-perpetrated sexual violence, and that this approach continues to deflect attention away from its other abuses.

Despite evidence of conflict-related rape and the frequency of state-perpetrated sexual violence in the post-war period, the Sri Lankan military insists that it pursues a "Zero Tolerance Policy on sexual abuses" (Rutnam 2017, 1). The state's LLRC report barely mentions sexual violence, save for a brief discussion of the video evidence described above. To date, there has been only one successful prosecution of a post-war state-perpetrated sexual violence crime: the 2010 rape of two Tamil women in Mullaithivu by four Sri Lankan army soldiers. Domestic press coverage attributes the singular outcome to the "extraordinary bravery and persistence of the women at the centre of the trial" (Pinto-Jayawardena 2017, 1). The fact that the perpetrators deserted the military may have also contributed to the state's willingness to prosecute.

The post-war government's disinterest in investigating sexual violence crimes represents a return to business as usual. Once the war ended, and with it the threat to the Sri Lankan state's supremacy, there was little to need to pursue the legitimacy gains promised by accountability processes. Simply put, post-war accountability offers few domestic political payoffs. The longstanding refusal to acknowledge anything other than a few select incidents of wartime rape therefore frames conflict-related sexual violence as an anomalous occurrence necessitating a

corresponding legal response. It paints the perpetrators of wartime rape as ‘bad apples,’ rather than representative of endemic abuse. This narrow focus thus establishes a dichotomy between *normal* and *abnormal* violence (Mackenzie 2010; Kirby 2013; Meger 2016). Further, the gendered manipulation of particular crimes rendered some victims worthy of state intervention, while others were dismissed and delegitimized. Therefore, we show that the construction of conflict-related sexual violence as a security threat that warrants a legal response is a deeply politicized process (Laustsen and Wæver 2000, 739; Meger 2016).

V. CONCLUSION

The Sri Lankan government’s targeted attention to acts of state-perpetrated sexual violence in conflict in the late 1990s presents a puzzle. State forces were implicated in various forms of brutal civilian victimization during the conflict and ignored frequent international and domestic calls for restraint. Successive Sri Lankan administrations have neither acknowledged nor addressed egregious human rights violations. Moreover, the limited pursuit of accountability that we describe occurred at a time when international advocates and institutions rarely prioritized wartime rape. Pressure to combat impunity for wartime sexual violence was gaining momentum within the human rights community at the time of the state’s early interventions, but there existed little expectation of accountability within domestic legal systems, particularly those of violating regimes.

Why did the Sri Lankan government take an active interest in condemning wartime rape among its security apparatus in the late 1990s? We argue that governments can garner political legitimacy by mobilizing their claims to statehood. Invoking the law to condemn human rights abuses allows them to stake claim on the monopoly of the legitimate use of violence, while simultaneously demonstrating that they can follow through on a ‘law and order’ platform capable of protecting civilian populations from harm. These findings advance the literature on rape as a weapon of war in important ways. Sexual violence can assume many different meanings, intentions, and purposes in different contexts. So too can its prohibition, condemnation, and punishment.

Moreover, the dynamics of the Sri Lankan case also illustrate that particular forms of violence can be more effectively mobilized for such purposes than other abuses. Sexual violence

cases are particularly useful for generating legitimacy. Governments can manipulate the gendered qualities of victimhood to reach across ethnic, political, and geographic lines. Case selectivity simultaneously allowed the state to construe other cases – those that involved perceived terrorists or LTTE combatants – as targets of legitimate state violence. The feminist international relations literature demonstrates that the gendered logic of women civilians as vulnerable and violable makes them uniquely susceptible to gender-based targeting (Sjoberg and Peet 2011). Our work expands this theoretical scope beyond the strategic use of violence to show that conflict actors can use strategic condemnation of violence to achieve similar politico-military ends.

The gendered manipulation of innocence, victimhood, and protectionism thus illustrates the janus-faced potential of emerging human rights norms. Specifically, governments can employ half-measures in human rights accountability to legitimize conflict-related goals, including expansionist violence and territorial control. States can also use these accountability mechanisms to obscure or distract from other gendered and non-gendered abuses. This is particularly important not only because sexual violence is uniquely exploitable in these cases, but because international and scholarly interventions into conflict-related sexual violence often highlight domestic legal accountability as a primary solution (see Advocacy Forum- Nepal 2017; de Brouwer 2015; Seelinger, Silverberg, and Mejia 2014). Undoubtedly, domestic prosecutions are a welcome compliment – or alternative – to international courts, local accountability can be transformative for violence survivors, and domestic legal systems are often best equipped to adjudicate internal human rights abuses (Lake 2014b; Lake 2017; Seelinger 2014). Still, our findings expose the need to scrutinize domestic engagement with human rights norms and to examine government inaction in response to atrocities.

Therefore, future research should explore these practices and their ramifications in cases beyond Sri Lanka. Scholars need not look far to recognize the strategic deployment of accountability in instances of sexual violence. Rwanda's post-conflict government, for example, often contrasts narratives of sexual violence perpetrated by Hutu militias with the professed self-restraint of the Rwandan Patriotic Army (RPA). The Rwandan Patriotic Front (RPF) government highlights the groundbreaking *Akayesu* verdict's determination that rape can constitute the crime of genocide, for example, while resisting investigations into RPF violence, in a bid to craft an image of its own integrity and morality (Umutesi 2015, 1). These findings and their implications may also translate across conflict actors. States are not alone in their exploitation of sexual violence

as a legitimacy-building tool. For example, the M23 armed movement in the eastern Democratic Republic of Congo vocalized its intent to prosecute rape and sexual violence within its ranks to present itself as a credible challenger to the Congolese army (Lake 2018, 237-38). A wider research lens will likely uncover both cross-national trends and case-specific mechanisms underpinning this legal instrumentalization. Across contexts, practitioners, scholars and advocates should remain wary of the ways in which human rights responses can be weaponized to justify militarized violence, while simultaneously reinforcing exclusionary categories of victimhood and deflecting attention away from other wartime abuses.

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