



# “ONLY JUSTICE CAN HEAL OUR WOUNDS”

LISTENING TO THE DEMANDS OF FAMILIES OF THE DISAPPEARED IN SRI LANKA

AMNESTY  
INTERNATIONAL



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**Quotation:** Focus group discussion with families of the disappeared, Mullaitivu District. Final Report of the Consultation Task Force on Reconciliation Mechanisms, 17 November 2016, Vol. 1, page 43.

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# MAP



Map No. 4172 Rev 3 United Nations

# 1. EXECUTIVE SUMMARY

**“Throughout the civil war in Sri Lanka, and throughout the other moments of violent conflict, it has been women – typically mothers and wives of the disappeared – who have been the face of all the disappeared, Tamil and Sinhalese, of this country; women, refusing to disappear, standing in for their loved ones who have been made invisible.”**

Subha Wijesiriwardena, 29 November, 2016

Sandya Eknaligoda has been relentless in her quest to discover what happened to her husband and who should be held responsible for his disappearance. Her husband Prageeth Eknaligoda, a freelance political cartoonist and contributor to the Lanka-e-News website, disappeared on the evening of 24 January 2010. With no known witnesses to events that night, Sandya was left struggling to prove what she believed, that Prageeth’s disappearance was directly related to her husband’s effort to expose corruption and human rights abuses by the government then in power. Sandya’s activism pushed the authorities to open new investigations that uncovered evidence of involvement by military intelligence personnel in the disappearance. By Sandya’s estimate she has attended court hearings at least 90 times since she first lodged her complaints.

Each time Sandya goes to court she faces the prospect of hostile intimidation. In 2016 a prominent member of the Buddhist nationalist Bodhu Bala Sena and other monks stormed the courtroom at Homagama and threatened her. An anonymous poster campaign thought to be sponsored by the same group called her an LTTE supporter. Sandya then became the first person to lodge a complaint under Sri Lanka’s Assistance to and Protection of Victims of Crime and Witnesses Act.

For years Prageeth’s case was obstructed at every turn, but Sandya has persisted. When Sri Lanka’s former Attorney General told the United Nations Committee Against Torture (CAT) in 2011 that Eknaligoda has not been disappeared but has fled the country, Sandya demanded he be called to testify in Prageeth’s habeas corpus hearing to clarify his comments. When he finally answered the court summons, he claimed not to remember who told him Eknaligoda was abroad, but Sandya was undeterred. She continued her campaign, writing repeatedly to Sri Lankan leaders demanding truth and justice, handing out appeals in front of Parliament and at other public gatherings; organizing vigils and protests and reaching out a hand of support to other wives and mothers of the disappeared to help them raise their own demands. And finally, she brought her case to the United Nations Human Rights Council.

Sandya’s determination to raise the profile of Prageeth’s case, and of enforced disappearances in general has forced some slow progress. In 2015, the Inspector General of Police ordered a fresh investigation into

Prageeth's disappearance and 11 suspects attached to an Army Intelligence Camp were taken into custody. A CID investigator revealed that Prageeth had been held at Giritale army camp, where the men were stationed, and then taken to Akkaraipattu camp in Ampara District. The court ordered high ranking army officers to cooperate with the CID team, but lawyers say that there continue to be instances where the army's failure to cooperate has obstructed proceedings.

The struggle is far from over for Sandya Eknaligoda, but she has made sure that Prageeth's case will not be forgotten.

Her experience shows that enforced disappearance is a crime without an end. Without the truth about the fate of a missing family member, those close to the individual are unable to seek justice and reparation for the crimes they have suffered and cannot properly mourn their loss. Family members' lives are suspended while they, and others close to the individual, can be further victimized for seeking the truth. As noted by the Working Group on Enforced and Involuntary Disappearances, "the act begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual."

This briefing highlights the experiences of family members of the disappeared who have pressed publicly for accountability. It examines the progress made by the Sri Lankan authorities but also highlights the continuing obstacles to ensuring truth, justice and reparation for crimes committed. This briefing puts forward recommendations aimed at ending impunity for enforced disappearances and better addressing the demands of families and others affected by this violation for redress.

Sri Lanka is bound by its obligations under international law, including under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention for the Protection of All Persons from Enforced Disappearance to conduct prompt, thorough, effective, independent and impartial investigations into alleged enforced disappearance by state forces as well as abductions or other forms of disappearance committed by non-state actors, to punish perpetrators and to provide and enforce effective remedies for victims.

In October 2015, more than 6 years after the end of the internal armed conflict and after decades of human rights violations and abuses committed by state and non-state actors against all communities in Sri Lanka, a new Sri Lankan government headed by President Maithripala Sirisena pledged to end impunity and take measures to ensure that such violations and abuses are never repeated. Amongst other measures the government committed to when it co-sponsored Human Rights Council Resolution 30/1 'Promoting reconciliation, accountability and human rights in Sri Lanka', it committed to undertake "a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial mechanisms" to ensure justice, truth and reparation, including:

- A judicial mechanism with a Special Counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law;
- A Commission for truth, justice, reconciliation and non-recurrence;
- An office on missing persons; and
- An office for reparations

The first measures to reach Parliament were efforts to address alleged disappearances, a violation that has brought untold suffering to tens of thousands of Sri Lankans over decades.

## METHODOLOGY

After 10 years, when Amnesty International was unable to secure permission for its delegates to visit Sri

Lanka, in 2015 our organisation resumed visits and face to face exchanges with Sri Lankan government officials, members of civil society and victims of human rights violations in Sri Lanka.<sup>1</sup>

Research for this briefing was conducted in Sri Lanka from 2-15 December 2015; 1-17 March 2016; and from 18 January – 4 February 2017 in the capital city of Colombo, and in Kandy, Batticaloa, Jaffna, Mannar, Mullaitivu, Puttalam and Vavuniya. Amnesty International delegates met individually and in groups with more than 80 people during these missions; many of them family members of the disappeared and human rights defenders supporting their demands for truth and justice. The team also held discussions with members of the legal community and Sri Lankan government officials, including Sri Lanka's Minister of Foreign Affairs and Minister of Justice; as well as government advisors and appointees to learn more about state efforts to design mechanisms to deliver truth, justice, reparation and guaranteeing non-recurrence for victims of human rights violations.

This briefing addresses alleged disappearances by state agents including Sri Lankan police, armed forces, and paramilitary groups, and non-state actors such as the LTTE. It highlights in detail four prominent cases where family members who believe the state is responsible for the disappearance of loved ones have chosen to campaign publicly for truth and justice. The briefing builds on a broader body of work by Amnesty International documenting enforced disappearances in Sri Lanka reaching back four decades. It draws on previous legal research; and interviews with individuals conducted outside Sri Lanka, including several women who have managed to take their complaints to the United Nations. Details and conditions described by victims and families have been cross-checked with reports by lawyers, other non-governmental organizations, UN agencies, and Sri Lankan and international media.

## **SRI LANKA'S RECORD OF ENFORCED DISAPPEARANCES**

With a backlog of 60,000 to 100,000 alleged disappearances in Sri Lanka since the late 1980s, there is no shortage of examples of frustrated justice. Most Sri Lankans know someone who has lost a family member to disappearance and every community has been affected. Sri Lankan authorities have failed to end enforced disappearances, and failed to undertake criminal investigations into complaints or identify the whereabouts or fate of the victim. They have failed to protect witnesses and families seeking truth and justice, and failed to prosecute perpetrators.

In June 2016, Chandrika Bandaranaike Kumaratunga, a former president of Sri Lanka and head of the government's Office on National Unity and Reconciliation, acknowledged having received at least 65,000 complaints of disappearances since 1995. Sinhalese young people suspected of affiliation with the leftist Janatha Vimukthi Peramuna (JVP) were killed or forcibly disappeared by government-operated death squads in 1989 and 1990. Tamils suspected of links to the Liberation Tigers of Tamil Eelam (LTTE) were forcibly disappeared by police, military and paramilitary operatives in the course of the armed conflict between 1983 and 2009, a pattern that continued for several years after the conflict ended. The LTTE took prisoners and abducted adults and children to serve as fighters; many of them are still missing today.

Human rights defenders, staff of humanitarian aid organizations, and prominent community leaders also fell victim to disappearances. While some disappearances may have been committed by non-state actors including private individuals – such as kidnappings and abductions of businessmen for the purpose of extorting ransom – Amnesty International has received reports from witnesses, families of victims and even former security personnel, which suggest that Sri Lankan authorities or officials were involved in many of these violations.

The Prevention of Terrorism Act (PTA) has contributed to the prevalence of enforced disappearances in Sri Lanka. It allows for extended administrative detention as well as incommunicado and secret detention, practices that dramatically increase risks to detainees. The failure of Sri Lankan authorities to guarantee

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<sup>1</sup> During the interim period Amnesty International maintained close contact with Sri Lankan human rights defenders and victims but was forced to rely on meetings outside the country and on remote communication to keep abreast of the human rights crisis there. These were risky exchanges that took enormous bravery on the part of Sri Lankan colleagues, who faced vilification, arrest, and even physical harm for communicating their human rights concerns to international organizations.

those arrested access to legal counsel from the point of arrest and during interrogation has exacerbated the risk of abuse.

Institutionalization of enforced disappearance through the practice of arbitrarily detaining individuals, holding them incommunicado and restricting information about their fate and whereabouts, including civilians, surrendering LTTE and their family members – potentially triggers criminal responsibility under international law which would extend not only to individuals who committed prohibited acts but also to their military commanders and civilian superiors.

Enforced disappearance and abductions have varied in time, scale and intensity at various points before, during and since the end of Sri Lanka's armed conflict, but there is credible evidence that they have in some cases been widespread and systematic and thus, if proven in a court of law, may amount to crimes against humanity.

## **STRUGGLE FOR TRUTH, JUSTICE AND REPARATIONS**

Despite daunting obstacles, family members of the disappeared have persisted in their efforts to seek remedies for the harm they have endured. They have testified before Sri Lankan commissions of inquiry; they have filed habeas corpus petitions in court; they have participated in protests, formed alliances with other victims, written letters to officials, submitted cases to the UN Special Procedures, and reached out to the media; some have even travelled to Geneva to make their case at the UN Human Rights Council.

The tireless calls of women like Sithy Ameenah, Sandhya Ekanaligoda, Vathana Sunthararaj and Murugananthan Janatha who feature in this briefing, for truth, justice and reparations for their own families and for other families of the disappeared have pushed the Sri Lankan state to acknowledge the seriousness of their claims, and to take initial legislative steps to address them. But much remains to be done. None of them have received truth or justice, or indeed assistance from the authorities to navigate daily life without a much needed breadwinner despite their very public struggles. And for each of the women featured in this briefing, there are countless others who continue to suffer in isolation and anonymity.

## **INITIATIVES SINCE RESOLUTION 30/1**

Still, the determined activism of families of the disappeared has had some results. In May 2016, Sri Lanka's Parliament ratified the International Convention for the Protection of All Persons from Enforced Disappearance. A bill to implement the Convention by criminalising enforced disappearance in the Sri Lankan Penal Code was tabled in parliament on 9 February 2017; it has yet to be debated. If enacted the law would be a positive step in holding perpetrators to account.

Parliament's passage of a Bill in August 2016 establishing the Office on Missing Persons was another positive development, but the failure to consult with victims and civil society and to address legitimate concerns that have been raised regarding some of its provisions undermined public confidence in the initiative. And despite the rush to pass the legislation, implementation has lagged. Six months after Parliament voted to enact the law, the legislation had still not been signed by the President.

Despite positive steps taken by the Sri Lankan authorities to end laws and practices with the potential to perpetuate abuse, including arbitrary arrest and detention, torture and enforced disappearances, other more regressive steps have been taken that would curtail certain rights and endanger freedoms. These include an attempt to introduce legislation to limit access to counsel until after police record a detainee's statement, and draft legislation intended to replace the PTA that raises serious human rights concerns.

In January 2017, Sri Lanka's Consultation Task Force on Reconciliation Mechanisms released its valuable and comprehensive final report to the President. The Task force was mandated to conduct public consultations on the design of mechanisms to advance truth, justice, reparation and non-recurrence. It



received over 7,000 submissions from throughout Sri Lanka, many of them from family members of the disappeared. Participants pointed to the need for witness protection and legal safeguards against arbitrary arrest and detention and other practices that increase the risk of enforced disappearances as high priorities, along effective reparation, including urgent interim measures to provide social, psychological and economic support for families of the disappeared, even as they emphasized their continuing struggle for truth and justice.

The detailed findings of the Task Force make clear that it is the victims of human rights violations, namely the family members seeking answers, who can best identify what they need and expect from these mechanisms, and what they require most urgently.

Amnesty International urges the Sri Lankan authorities to keep victims at the centre of efforts to ensure justice, truth, reparation and guarantees of non-recurrence and makes the following key recommendations to better address the needs of families of the disappeared.

- Enact legislation making disappearance a crime under national law in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance. Where sufficient admissible evidence exists, prosecute those responsible for disappearances promptly before civilian courts in fair trials without recourse to the death penalty;
- Enact the Office on Missing Persons Act and establish the Office without further delay; ensuring its effectiveness by seeing that it is fairly, transparently and adequately staffed and resourced; support it in submitting information on enforced disappearances to prosecuting authorities;
- Preclude the application of amnesties, immunities and other measures of impunity to persons suspected of committing crimes under international law;
- Formally acknowledge and prioritize the findings and recommendations of the Consultation Task Force;
- Ensure that victims, including families of the disappeared, are provided with full and effective reparation to address the harm they have suffered, including restitution, compensation, rehabilitation and satisfaction;
- Repeal the Prevention of Terrorism Act (PTA) and end its use immediately; abolish Sri Lanka's system of administrative detention and ensure that any future legislation meant to replace the PTA meets international standards;
- Release all individuals held under the PTA or other forms of arbitrary or secret detention unless they are charged with recognizable criminal offences and remanded in custody by an independent, regularly constituted court.

# 2. THIRTY YEARS OF DISAPPEARANCES

**“Enforced disappearances of persons has been a commonplace reality island wide; a monstrous weapon always ready at hand to quell dissent, never totally eliminated though its manifestation may vary in intensity from time to time.”**

Manouri Muttetuwegama, introducing the interim report of the Consultation Task Force on Reconciliation Mechanisms, 8 August 2016

Between 1989 and 1990 tens of thousands of Sinhalese young people suspected of affiliation with the Janatha Vimukthi Peramuna (JVP) were killed or forcibly disappeared by government-operated death squads.<sup>2</sup> Throughout the protracted armed conflict between the Sri Lankan armed forces and Liberation Tigers of Tamil Eelam (LTTE), which started in 1983 and ended in May 2009, Tamils suspected of links to the LTTE were forcibly disappeared by police, military and paramilitary operatives. Again estimated numbers are in the tens of thousands. The LTTE took prisoners and abducted thousands of Tamil adults and children to serve as fighters; many of whom are still disappeared today.<sup>3</sup>

Even after the armed conflict ended Amnesty International continued to receive information on enforced disappearances and abductions, in particular of people with actual or suspected links to the LTTE, as well as political opponents and critics of the government, its supporters or allied paramilitary groups. Although many victims have been of Tamil ethnicity, victims also included human rights defenders, staff of humanitarian aid organizations, and prominent community leaders.<sup>4</sup> While some may have been committed by non-state

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<sup>2</sup> Nongovernmental organizations in Sri Lanka estimated that at least 30,000 and possibly as many as 60,000 people were killed or forcibly disappeared in counterinsurgency operations against the JVP that peaked between 1989 and early 1990. Many victims were killed by government-operated death squads; torture and deaths in custody were also reported in large numbers. JVP violence also claimed thousands of lives. See Amnesty International, "Extrajudicial Executions, 'Disappearances' and Torture, 1987 to 1990", 1 September 1990, Index number: ASA 37/021/1990, <https://www.amnesty.org/en/documents/asa37/021/1990/en/>. See also, Feizal Samath, "Sri Lanka, New Rulers have bloody past," *Interpress Service*, 19 December 2001, available at <http://www.atimes.com/ind-pak/CL19Df03.html>; and Wasana Punyasena, "The Facade of Accountability: Disappearances in Sri Lanka," 23 B.C. Third World Law Journal, 115 (2003), <http://lawdigitalcommons.bc.edu/twlj/vol23/iss1/4>, p. 129.

<sup>3</sup> See Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP, p. 129, paras 637 and 638: "Following the resumption of hostilities in 2006, ...the LTTE ... turned increasingly to forced recruitment. ... the SLMM [Sri Lankan Monitoring Mission] received 1,248 complaints of abductions of adults between 2002 and 2007...Cases of abductions have also been documented by the LLRC and the Presidential Commission to Investigate Complaints Regarding Missing Persons. According to the Presidential Commission's April 2015 Interim Report, 17 per cent of the 13,378 allegations received in the form of written complaints concerned abductions by the LTTE."

<sup>4</sup> "In addition to its regular military operations, the Government employed clandestine operations to uncover LITE safe houses, dismantle the LITE networks in the South and eliminate persons believed to be associated with the LITE. A potent symbol of these operations was the "white van." ...used to abduct and often disappear critics of the Government or those suspected of links with the LTTE, and, more generally,

actors including private individuals – such as kidnappings and abductions of businessmen for the purpose of extorting ransom – Amnesty International has received reports from witnesses, families of victims and even former security personnel, which suggest that Sri Lankan authorities or officials are involved in many of these violations.<sup>5</sup>

### **WHAT IS AN ENFORCED DISAPPEARANCE?**

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance identifies the following elements in the definition of enforced disappearances:

- There is an arrest, detention, abduction or any other form of deprivation of liberty;
- That conduct is carried out by agents of the state or by persons or groups of persons with the authorization, support or acquiescence of the state;
- The conduct is followed either by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person;
- As a result, the disappeared person is placed outside the protection of the law.

Although this definition does not cover such acts committed by non-state actors without the authorization, support or acquiescence of the state – often referred to as ‘abduction’ or ‘disappearance’ - Article 3 of the Convention requires that states parties must take appropriate measures to investigate such acts and to bring those responsible to justice. This is in line with the obligations of all states to protect the right to life and security of the person of everyone in any territory subject to its jurisdiction, no matter who the perpetrator is.<sup>6</sup>

Enforced disappearance is a crime under international law which all states have an obligation to investigate and prosecute even if the crime was committed abroad and neither the suspect nor the victims are nationals of that state.<sup>7</sup> No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.<sup>8</sup>

The crimes represent an accumulation of human rights violations including: the right to recognition as a person before the law; the right to liberty and security of the person; the right to an identity; the right to a fair trial and to judicial guarantees; and all too often the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; and ultimately, the right to life. Victims’ families are denied the right to know the truth about an enforced disappearance and the right to an effective remedy. The uncertainty faced by relatives unable to learn the truth about their loved ones has also been held in itself to constitute a form of torture.<sup>9</sup>

When enforced disappearance is committed as part of a widespread or systematic attack on a civilian population it amounts to a crime against humanity.<sup>10</sup>

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to instill fear in the population. An elite unit within the Special Task Force (STF) of the police is implicated in running these white van operations. Those abducted were removed to secret locations, interrogated and tortured... Many were killed and their bodies disposed of secretly. Human rights workers, journalists, newspaper editors and humanitarian workers accused of being "Tiger sympathizers" were also caught in the net. In the period between 2006 and the end of the war, 66 humanitarian workers were either disappeared or killed." (Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 63, page 17).

<sup>5</sup> See Amnesty International, "Locked Away; Sri Lanka's Security Detainees", March 2012, Index number: ASA 37/003/2012, pp 32-33, <https://www.amnesty.org/en/documents/asa37/003/2012/en/>.

<sup>6</sup> See International Covenant on Civil and Political Rights Articles 6 and 9; Human Rights Committee, General Comment no.31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant-UN Doc CCPR/C/21/Rev.1/Add 13(26 May 2004), para 3.

<sup>7</sup> Article 14 of the Declaration on the Protection of All Persons from Enforced Disappearance states: "Any person alleged to have perpetrated an act of enforced disappearance in a particular state shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial".

<sup>8</sup> Article 1(2), International Convention for the Protection of All Persons from Enforced Disappearance. Article 34 and 35 of the Convention provides the Committee on Enforced Disappearance, its treaty body, with powers to investigate instances of enforced disappearance occurring on a widespread or systematic basis and to refer it to the UN Secretary General in certain circumstances.

<sup>9</sup> See for instance UN Human Rights Committee, "El-Megreisi v Libyan Arab Jamahiriya", Communication No. 440/1990, UN Doc. CCPR/C/50/D/440/1990 (1994); Rafael "Mojica v. Dominican Republic", Communication No. 449/1991, UN Doc. CCPR/C/51/D/449/1991 (1994). The UN Human Rights Committee ruled specifically on enforced disappearance as a form of torture in Sri Lanka in "Sarma v Sri Lanka", Views, 31 July 2003, para. 9.5.

<sup>10</sup> See for example: Article 5 International Convention for the Protection of All Persons from Enforced Disappearance; Article 7 of the Rome Statute of the International Criminal Court.

In June 2016, Sri Lanka acknowledged having received at least 65,000 complaints of disappearances since 1995.<sup>11</sup> To date, almost no one has been held accountable. Most Sri Lankans know someone who lost a family member to disappearance over the decades; every community has been affected. The fact that state forces have repeatedly resorted to enforced disappearances in counterinsurgency and policing, and have done so with impunity for nearly 30 years has shaped the public's relationship with authority and trust in its systems. Thirty percent of Sri Lankans surveyed by the Centre for Policy Alternatives in February 2016 expressed no trust in law enforcement. Trust in Sri Lanka's military varied by ethnicity, with Tamils (35.7%) and Muslims (22.7%) saying that they distrusted the Army as opposed to only 10.5% of Sinhalese surveyed.<sup>12</sup>

### **ARREST OR ABDUCTION: WHY THE CONFUSION?**

**"I was on my way back from a shop when a van pulled into the lane and a man asked for my ID. Before I could take out my ID, they pushed me into the van. I was about to scream, but they put something into my mouth and tied my hands. Initially I didn't know who they were but while they were interrogating me they said they were CID. ... It did not seem like a police station. It was a dark building, and I couldn't see. They blindfolded me when they took me from room to room" - "Shanthi," arrested in Colombo in 2010; interviewed in 2014.<sup>13</sup>**

The terms arrest and abduction are often used interchangeably in Sri Lanka because security force personnel -- including various police units, army, navy and air force personnel, and several armed groups that have worked alongside those forces as paramilitaries have employed tactics when taking alleged suspects into custody that make it difficult for anyone, including victims, to identify whether the arrest is lawful, which authority has detained them, and whether it is in fact an arrest as opposed to a criminal abduction.

These practices have included the use of unmarked vehicles (such as vans and SUVs) without license plates; forcible apprehension of suspects without following proper arrest procedures; reliance on plainclothes operatives and paramilitary proxies who fail to identify themselves; unofficial and secret places of detention; extortion of bribes and ransom demands that further blur the distinction between law enforcement and criminality; and the extensive use of torture, including sexual abuse of detainees. All these acts increase risks for detainees and the potential for an arrest to become an enforced disappearance.

Although cases of enforced disappearance and abductions in Sri Lanka have varied in time, scale and intensity at various points before, during and since the end of Sri Lanka's armed conflict, there are credible allegations that they have in some cases been widespread and systematic and thus, if proven, may amount to crimes against humanity.<sup>14</sup>

Sri Lanka's Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC)<sup>15</sup> reported receiving over one thousand complaints of enforced disappearances by members of the security forces during its hearings in 2010 and 2011.<sup>16</sup> Its final report expressed alarm at the "large number of representations made alleging arrests, enforced or involuntary disappearances, and arbitrary detention."<sup>17</sup> The September 2015 report of the OHCHR Investigation on Sri Lanka (OISL) noted based on the information it had amassed, that "Sri Lankan authorities have, in a widespread and systematic manner, deprived a considerable number of

<sup>11</sup> Reuters, "Sri Lanka admits 65,000 missing from war, insurrection," 8 June 2016, <http://in.reuters.com/article/sri-lanka-rights-idINKCNOYU277>.

<sup>12</sup> Centre for Policy Alternatives, "Democracy in Post War Sri Lanka Top Line Report", April 2016, [http://www.cpalanka.org/wp-content/uploads/2016/04/Democracy-survey-April-2016\\_FF/final-report.pdf](http://www.cpalanka.org/wp-content/uploads/2016/04/Democracy-survey-April-2016_FF/final-report.pdf).

<sup>13</sup> Amnesty International Interview, April 2014.

<sup>14</sup> See, Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011 p.64, para 234; p 68, para 251 and p. 69 para 251(e); see also, Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, 16 September 2015, pp 82-92.

<sup>15</sup> The Lessons Learnt and Reconciliation Commission (LLRC) was a presidential commission of inquiry appointed by Mahinda Rajapaksa in 2010 to investigate factors leading to the failure of the ceasefire agreement of February 2002, lessons drawn from those incidents and to recommend measures to prevent their recurrence, with an aim of communal reconciliation.

<sup>16</sup> Annex 5.1 of the Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011 indicates that during its proceedings in 2010 and 2011, the LLRC received reports of 3,596 disappearances including 1,018 complaints of disappearances of people taken into custody by police or security forces.

<sup>17</sup> Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011, para 5.34, page 163, [http://www.priu.gov.lk/news\\_update/Current\\_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf](http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf).

victims of their liberty, and then refused to acknowledge the deprivation of liberty or concealed the fate and whereabouts of the disappeared person.”<sup>18</sup>

The institutionalisation of enforced disappearance through the practice of arbitrarily detaining individuals, holding them incommunicado and restricting information about their fate and whereabouts, in addition to the disappearances of persons who were not taking part in the hostilities at the end of the conflict – including civilians, surrendering LTTE members and members of their families– potentially triggers criminal responsibility which would extend not only to individuals committing prohibited acts but also to their military commanders and civilian superiors.

The OISL “documented pervasive violations and abuses related to detention perpetrated by the security forces and related paramilitary groups.”<sup>19</sup> It noted in particular arrests by the Sri Lankan Army (SLA); the Terrorist Investigation Division (TID) and Criminal Investigation Department (CID) and the paramilitary Karuna Group.<sup>20</sup>

### EXCERPT FROM THE OISL REPORT

352. According to the information gathered by OISL, the different branches of the Sri Lankan security forces worked together in perpetrating unlawful and arbitrary arrests, demonstrating a high degree of coordination, joint intelligence and information sharing, as well as joint planning, which continued throughout the period of detention, interrogation, torture and release or transfer to prison. Where identified, the security forces carrying out the arrest were often members of the SLA, TID or CID, sometimes with the support of SLA, especially Military Intelligence. The security forces had at their disposal information gathered through informants, including former LTTE cadres, some of whom had been detained prior to becoming informants, and that information had been extracted under torture or threat of torture.

353. Over time, collusion between the Karuna Group, the STF of the police and Military Intelligence in ‘white van’ arrests became more apparent. The Karuna Group was not necessarily initially under the total control of the security forces, but over time, its links with security forces became increasingly evident and the fact that it enjoyed immunity and was able to carry out unlawful actions, either on its own accord, or directly on behalf of or with Government forces.

354. The Karuna Group had full freedom of movement within Government-controlled areas, circulating freely through checkpoints back to their bases that were organized in close proximity to army camps. By 2006, the Karuna Group clearly operated from Welikanda Army camp, alongside or on behalf of SLA and SLN intelligence operatives, conducting ‘white van’ arrests and unlawful killings. Following the arrests, the vehicles passed through army and police checkpoints without being stopped, on their way to detention facilities run by various State security agencies.”<sup>21</sup>

## SECRET DETENTION

Secret detention in an unrevealed place, which is not an officially recognized place of detention, can constitute enforced disappearance. Indeed, it is expressly prohibited by Article 17 of the International Convention for the Protection of All Persons from Enforced Disappearance.

Amnesty International has documented cases of secret detention in Sri Lanka over the course of more than 20 years.<sup>22</sup> Despite official denials, including in Sri Lanka’s response to UN Human Rights Committee

<sup>18</sup> This report was carried out by OHCHR at the request of UN Human Rights Council as expressed in Resolution 25/1, adopted in March 2014. Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, 16 September 2015.

<sup>19</sup> Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, 16 September 2015.

<sup>20</sup> Originally a split away faction of the LTTE that then allied itself with the government.

<sup>21</sup> Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, 16 September 2015.

<sup>22</sup> As far back as 1992 senior military officers admitted to Amnesty International delegates it held certain prisoners in unacknowledged detention, even hidden from ICRC. An officer told researchers that secret detention would only be necessary for a couple of days, because after that time the operational value of their information would diminish. Others, however, said secret detention might continue for several

questions in October 2014,<sup>23</sup> agents of Sri Lanka's security services regularly held detainees in unofficial or secret places of detention, including commandeered school buildings, factories and private homes.<sup>24</sup> Former detainees as well as members of the Sri Lankan security forces allege that the Sri Lankan military, police and paramilitary affiliates maintained secret places of detention where prisoners were interrogated, tortured and sometimes killed.<sup>25</sup> Amnesty International has long recommended that the Sri Lankan government undertake a public and impartial investigation into the existence and use of secret detention sites throughout the country.<sup>26</sup> It must also investigate all acts of torture and other ill treatment, extrajudicial killings and other violations that may have taken place in such facilities with a view to holding state actors accountable for actions and providing an effective remedy for victims of such violations.

In 2011, the UN Secretary General's Panel of Experts on Accountability in Sri Lanka found "credible" allegations that secret detention was used in the context of "clandestine operations to uncover LTTE safe houses, dismantle the LTTE networks in the South and eliminate persons believed to be associated with the LTTE ... and, more generally, to instil fear in the population."<sup>27</sup> It deemed credible allegations it received that a unit within the Special Task Force (STF) of the police was implicated in running operations where people were abducted for interrogation in white vans:

**"Those abducted were removed to secret locations, interrogated and tortured in a variety of ways, including through beatings, forced nudity, suffocation with plastic bags, partial drowning, extraction of finger or toe nails, or administering electric shocks. Many were killed and their bodies disposed of secretly."** <sup>28</sup>

In November 2011, the UN Committee Against Torture called on Sri Lanka to "ensure that no one is detained in any secret detention centres, as these facilities are per se a breach of the Convention. The State party should investigate and disclose the existence of any such facilities and the authority under any of them has been established. The State party should also ensure that the results of the investigation are made public. It should abolish any such facilities and any perpetrators found responsible should be held accountable."<sup>29</sup> The UN Human Rights Committee in its Concluding Observations on Sri Lanka's fifth periodic report said that the government should publish all official places of detention on a regular basis and, "explicitly forbid and criminalize the use of unofficial places for detention."<sup>30</sup>

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weeks. They admitted that records of such a prisoner's arrest would probably be falsified to hide the true date of their arrest. Amnesty International learned of one prisoner who had been secretly detained by the army for a year, during which time he was severely tortured. (Amnesty International, "Sri Lanka: An assessment of the human rights situation", 1 February 1993, Index number: ASA 37/001/1993.

<sup>23</sup> The Sri Lankan government denied the involvement of the armed forces in enforced disappearances and said that "the reference to 'white vans' as a means of disappearances is a sensationalised allegation that appeared in some media reports, rather than being based on realistic facts." (CCPR/C/LKA: Human Rights Committee, Consideration of Sri Lanka's Periodic Report under ICCPR, 7-8 October 2014)

<sup>24</sup> Amnesty International, "Locked Away; Sri Lanka's Security Detainees", March 2012, Index number: ASA 37/003/2012. See also Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf), and United Nations Human Rights Council, "Report of the Working Group on Arbitrary Detention", 2009, A/HRC/10/21, paragraph 54, also cited in the Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP.2, page 73, para 341.

<sup>25</sup> Amnesty International reported these allegations in 2012 in "Locked Away; Sri Lanka's Security Detainees", March 2012, Index number: ASA 37/003/2012, but claims that Sri Lankan government forces employ safe houses to interrogate detainees date back many years before that. In January 2002, *Sunday Times* defence correspondent Iqbal Athas reporting on a police raid on what turned out to be a secret Army safe house wrote: "...Safe houses. A plethora of them existed under the Police and the security forces when they combated the violence of the then outlawed Janatha Vimukthi Peramuna (JVP) in the late 1980s. Suspects were arrested and grilled at these Safe houses not to mention the complaints it drew from human rights groups of torture. In the later years, major state intelligence agencies had their Safe Houses to detain and question Tiger guerrilla suspects." - "The Great Betrayal," Situation Report, *Sunday Times*, 10 January 2002, <http://sundaytimes.lk/020120/sitrep.html>.

<sup>26</sup> See Amnesty International, "Sri Lanka: Briefing to the UN Committee Against Torture", 14 October 2011, Index number: ASA 37/016/2011, <https://www.amnesty.org/en/documents/asa37/016/2011/en/>. See also, Amnesty International, "Locked Away; Sri Lanka's Security Detainees", March 2012, Index number: ASA 37/003/2012 <https://www.amnesty.org/en/documents/asa37/003/2012/en/>.

<sup>27</sup> Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

<sup>28</sup> Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

<sup>29</sup> Committee Against Torture Concluding Observations, "Conclusions and recommendations of the Committee against Torture: Sri Lanka", UN Doc. CAT/C/LKA/CO/3-4, 8 December 2011, para. 8, [http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf).

<sup>30</sup> Concluding observations on the fifth periodic report of Sri Lanka, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=811&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=811&Lang=en),

# POOR POLICE PROCEDURE

Ensuring that arrest and detention procedures are followed and that records are accurately kept and are not subject to tampering are key to ensuring that detainees remain safe and free from harm. As MCM Iqbal, former Secretary to three Sri Lankan commissions of inquiry into disappearances, noted in 2016:

**“Many members of the Police and Security Forces who had been perpetrating abductions, torture and enforced disappearances in the past, have a mind-set that makes them feel they will not be made to face the consequences of their misconduct...Police Information Books in some stations had been destroyed despite a specific circular issued by the IGP [Inspector General of Police] to preserve them. Detention Registers of certain Police Stations did not contain the names of persons taken into custody while they were there in the Diet Registers of the Station [indicating meals had been provided while in lock up]. No disciplinary action was taken in such cases”<sup>31</sup>**

Good record-keeping also protects police from false allegations of abuse. In September, police in Hambantota arrested three young men who they suspected of stealing sacks of paddy (rice). The case received widespread attention in the Sri Lankan media after one of the suspects, 20-year-old G.G. Gayashan subsequently disappeared from his cell.<sup>32</sup> This raised an alarm for many Sri Lankans given the country's history of enforced disappearances.<sup>33</sup> When Gayashan disappeared his parents lodged a complaint, but the police in Hambantota denied having arrested him and their log books reportedly showed only two detainees. Relatives who had visited him in lock up before he disappeared claimed he had been assaulted by the police. All this suggested that something terrible may have occurred.

But to the surprise of many, the missing man was found alive and unharmed. Gayashan had apparently escaped from police custody and taken refuge in a Buddhist Temple. An investigation ordered by the Police Commission determined that police personnel had altered arrest records to hide their mistake.<sup>34</sup> This very dangerous practice has been seen in many more serious cases and suggests the need for tighter supervision and disciplinary procedures.

Article 22 of the International Convention for the Protection of All Persons from Enforced Disappearance requires the government to prevent and impose sanctions for the failure to record the deprivation of liberty, or the recording of any information which the official responsible for the official register knows or should have known to be inaccurate.

# VIOLATIONS OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

**“Prageeth was the main breadwinner in our family. After he disappeared our entire family maintenance structure broke down. It is the same for many of us from the families of the disappeared. We need to have some system for ensuring compensation and reparation for our loss.”<sup>35</sup> - Sandya Ekneligoda, Geneva, August 31, 2012**

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<sup>31</sup> M.C.M. Iqbal, “Enforced Disappearances in Sri Lanka; Legacy and ongoing challenges”, *Groundviews*, 19 May 2016, <http://groundviews.org/2016/05/19/enforced-disappearances-in-sri-lanka-legacy-and-ongoing-challenges/>.

<sup>32</sup> News 1st, “Six days lapse since disappearance of Ambalantota youth in police custody”, 11 September 2016, <http://newsfirst.lk/english/2016/09/six-days-lapse-since-disappearance-ambalantota-youth-police-custody/148161>

<sup>33</sup> Basil Fernando, “Gayashan Is Still Missing”, *Colombo Telegraph*, 14 September 2016, <https://www.colombotelegraph.com/index.php/gayashan-is-still-missing/>

<sup>34</sup> Asian Mirror, “Hambantota Police Has Falsified Records: Police Media Spokesman”, 14 September 2016, <http://www.asianmirror.lk/news/item/19098-hambantota-police-has-falsified-records-police-media-spokesman>, and The Sunday Times, “Dept. inquiry against Hambantota Police for negligence of duties,” 18 September 2016, <http://www.sundaytimes.lk/160918/news/dept-inquiry-against-hambantota-police-for-negligence-of-duties-209113.html>

<sup>35</sup> Sandya Ekneligoda, Geneva, August 31, 2012, Speech made by Sandya Ekneligoda on behalf of the Society for Threatened Peoples, [www.gfbv.ch](http://www.gfbv.ch), at the informal UPR briefing organised by UPR INFO.

Enforced disappearances can also violate economic, social and cultural rights for both the victims and their families, including the right to protection and assistance to the family; the right to an adequate standard of living; the right to health and the right to education. It is therefore essential to address the impact enforced disappearances have on women in any reparation programme; and to provide interim relief to victims in need until a comprehensive plan can be implemented. This was a message that came out strongly in public consultations held in 2016 on the development of mechanisms to deliver truth, justice, reparation and non-recurrence.<sup>36</sup>

“The serious economic hardships which usually accompany a disappearance are most often borne by women, and it is women who are most often at the forefront of the struggle to resolve the disappearance of family members. In this capacity they may suffer intimidation, persecution and reprisals. When women are themselves direct victims of disappearance, they become particularly vulnerable to sexual and other forms of violence.”<sup>37</sup>

In Sri Lanka, the majority of victims of enforced disappearances have been male — sons, husbands, fathers; and frequently a family’s sole breadwinner. Women have also been victims of enforced disappearances by state forces and many were abducted by the LTTE to serve as fighters. Families continue to suffer; even if a victim survives an enforced disappearance and returns home, the experience can leave lasting physical and psychological scars that can make it difficult for them to return to normal life.

On 30 August 2016, a diverse group of family members of the disappeared from different ethnic groups and communities throughout Sri Lanka gathered in Kelaniya, Sri Lanka to commemorate the International Day of the Disappeared. Members of the gathering, who call themselves the Affected Families Forum, demanded that the Government of Sri Lanka provide immediate assistance to affected families “without waiting for mechanisms to be set up,” noting that “affected families have been left waiting without answers to any of their grievances for over seven years ... since the military conflict was brought to an end.”<sup>38</sup>

They demanded a livelihood allowance of at least RS. 100,000 (US\$675) for all affected families; “adequate monthly sustenance” for affected widows; free education for all orphaned children and the children of widows; as well as counseling and other medical care if needed.

They also called on the government to assist the provincial councils to design and implement specialized livelihood programs. The Forum also urged the government to take immediate steps to further protect witnesses, guarantee that the Right to Information Act<sup>39</sup> would be applied to the operations of the Office on Missing Persons and to repeal the PTA. Delegates called on the authorities to deliver a road map laying out its plans for establishing the remaining promised truth, justice and reparation mechanisms.

Many of these demands are also reflected in the findings of the Government-appointed Consultation Task Force on Reconciliation Mechanisms, discussed in this report.

## SYSTEMIC FAILURES

### LACK OF ACCOUNTABILITY OF POLICE AND ARMED FORCES

Impunity remains the rule for enforced disappearances and other violations of human rights in Sri Lanka. For thirty years Sri Lankan authorities have failed to stop acts of enforced disappearances, failed to undertake criminal investigations into complaints and to identify the whereabouts or fate of the victim, failed to protect

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<sup>36</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, 17th November 2016, <http://www.scrm.gov.lk/documents-reports>

<sup>37</sup> Office of the United Nations High Commissioner for Human Rights, Enforced or Involuntary Disappearances, Fact Sheet No. 6/Rev.3, <http://www.un.org/en/events/disappearancesday/pdf/FactSheet6Rev3.pdf>

<sup>38</sup> “Resolutions adopted at the National Delegates’ Conference of Affected Families of the Enforced or Involuntary’ Disappeared held at Thulana Auditorium, Kelaniya on the 30th of August, International Day of the Disappeared.”

<sup>39</sup> In June, Sri Lanka’s Parliament passed the Right to Information Act No. 12 of 2016, aimed at combating corruption and holding government agencies accountable to the public. It recognized citizens’ right of access to information in the “possession, custody or control of a public authority.” Article 15 of the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, states that provisions of the Right to Information Act shall not apply with regard to confidential information.



witnesses and families seeking truth and justice, and failed to prosecute those against whom there was evidence of wrongdoing.<sup>40</sup>

For years, and in many cases for decades, surviving victims and their families have been denied reparation in accordance with international standards. These failures were compounded by a refusal to accept the recommendations of national and international bodies tasked with addressing enforced disappearances, including successive ad hoc national commissions of inquiry on disappearances, the LLRC, and the UN Working Group on Enforced and Involuntary Disappearances (WGEID).<sup>41</sup>

It should be noted that WGEID, which issued strong reports on Sri Lanka in the 1990s was not issued an invitation to visit the country between 1999 and November 2015, when it was finally allowed to conduct a field mission, and for 16 years its recommendations were largely ignored. It is for these reasons that Amnesty International and many activists in Sri Lanka have prioritized campaigns for action on enforced disappearances as the country seeks to deliver on Sri Lanka's recent commitments to the UN Human Rights Council to ensure justice, truth, reparation and guarantees of non-recurrence for past human rights violations and abuses.<sup>42</sup>

## LACK OF LEGAL REMEDIES FOR VICTIMS AND THEIR FAMILIES

Families of the disappeared have long encountered official obstacles to their effort to seek legal remedies for disappearances, as noted by the Consultation Task Force on Reconciliation Mechanisms (CTF) in its final report:

**“Affected families described a range of barriers they faced upon taking cases to the police, armed forces and administrative officials. These included the following: denial of arrest and detention; refusal to record statement or police entry; misreporting information; disposal of paperwork filed by families of the disappeared; delays in following up on cases; neglect of cases; requesting documentation they couldn't provide, and the use of coercion in making families accept death certificates and compensation.”<sup>43</sup>**

Habeas corpus has not generally been an effective remedy in Sri Lanka for preventing enforced disappearances, torture and other custodial abuse due to a myriad of factors which include: long court delays, failure of detaining agencies to cooperate with the courts, harassment and intimidation of witnesses and family members of victims, transfers of cases to distant courts at the request of relevant authorities suspected of committing the violations, and judicial failures to enforce the individual right to liberty.<sup>44</sup>

There are however, as noted below, continued important efforts by families to use habeas corpus to sustain attention to their demands for truth and justice. The lack of legislation criminalizing enforced disappearances has posed additional obstacles to families' efforts to seek remedies.

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<sup>40</sup> Amnesty International has been documenting enforced disappearances in Sri Lanka for decades. For one of the earliest examples see, Amnesty International, "Extrajudicial Executions, 'Disappearances' and Torture, 1987 to 1990", 1 September 1990, Index number: ASA 37/021/1990, <https://www.amnesty.org/en/documents/asa37/021/1990/en/>. In 1994, Amnesty International released "Sri Lanka: When Will Justice Be Done?" (30 June 1994, Index number: ASA 37/015/1994, <https://www.amnesty.org/en/documents/asa37/015/1994/en/>) highlighting continued impunity for 18 well-known cases of extrajudicial executions and enforced disappearances dating back to 1983. These involved more than 750 individual victims, from a lawyer tortured to death in police custody, to the mass "disappearance" of 159 people from a camp for displaced persons in eastern Sri Lanka. Of these cases, only two eventually resulted in convictions. In 2015, Amnesty International called on WGEID to stress the need for accountability for disappearances during its visit to Sri Lanka ("Sri Lanka: Visit of the UN Working Group on Enforced and Involuntary Disappearance to Sri Lanka", 9 November 2015, Index number: ASA 37/2821/2015, <https://www.amnesty.org/en/documents/asa37/2821/2015/en/>).

<sup>41</sup> Presidential Commissions of Inquiry into Disappearances (1991, 1992, 1993); three Zonal Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons (1994); the All Island Commission (1998); Presidential Commission on Abductions, Disappearances, and Killings (Tillakeratne Commission, September 2006); Presidential Commission of Inquiry appointed to investigate and inquire into alleged serious violations of Human Rights arising since 1 August 2005; Follow-up to the Tillakeratne Commission - Presidential Commission of Inquiry to Investigate Abductions, Disappearances, Killings by unknown persons that have occurred in all parts of Sri Lanka during the period from 13 September 2006 to 25 November 2009, extended to 9 December 2009, (May 2007); the LLRC (2010), The Presidential Commission to Investigate Complaints Regarding Missing Persons (2013). The UN Working Group on Enforced and Involuntary Disappearances (WGEID) undertook missions to Sri Lanka in 1991, 1992, 1999 and 2015.

<sup>42</sup> Human Rights Council Resolution 30/1 'Promoting reconciliation, accountability and human rights in Sri Lanka' A/HRC/RES/30/1, 14 October 2015.

<sup>43</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, 17th November 2016, page 188, para 31.

<sup>44</sup> See, Kishali Pinto-Jayawardena and Jayantha de Almeida Gunaratne, "Habeas Corpus in Sri Lanka; Theory and Practice of the Great Writ in Extraordinary Times", Law and Society Trust, January 2011.

## THE PREVENTION OF TERRORISM ACT (PTA)

The PTA has been a principal driver of enforced disappearances in Sri Lanka for decades. It has perpetuated enforced disappearances in Sri Lanka by allowing extended administrative detention as well as incommunicado and secret detention. Placed outside the protection of the law, detainees are at high risk of torture, other ill-treatment, extrajudicial execution, enforced disappearance or other human rights violations.<sup>45</sup> Amnesty International has called for its repeal and for the authorities to stop using the Act until that can be accomplished. The OISL report, stated that “the PTA violates many international standards regarding due process and the right not to be arbitrarily detained.”<sup>46</sup> In practice, however, the police have continued to arrest and detain people under the Act. The Counter-Terrorism Bill, if enacted as currently drafted, would continue to apply the PTA to those already detained under the Act.

The PTA allows authorities broad discretion to hold detainees where they choose and to move detainees from place to place while under investigation.<sup>47</sup> This practice is a particularly dangerous one for detainees. Section 9 grants extraordinary power to the Minister of Defence to order the detention of individuals for investigation or as a preventative measure, “in such place and subject to such conditions as may be determined by the Minister”; the Ministry is not required by the Act (or elsewhere) to inform the families of the suspect or to make that information publicly available. Section 7(3)(a) of the PTA also allows police officers investigating individuals arrested to take them “during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation.”

**“...I was held alone. It was a room, very small and dirty – a filthy room.... Even my parents didn’t know where I had been taken. Those ten days – the experiences I had... I didn’t even believe at the last point that I would even be alive.” - “Lakshmi,” April 2014**

The PTA does not prohibit incommunicado detention, which is detention without contact with the outside world, and in particular without contact with a lawyer, family, an independent doctor or an impartial court.

The UN General Assembly has found that “prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment,”<sup>48</sup> The Human Rights Committee has stated that provisions should be made against the use of incommunicado detention,<sup>49</sup> and the Committee Against Torture has consistently called for its elimination.<sup>50</sup> The UN Special Rapporteur on Torture, recognising that “torture is most frequently practised during incommunicado detention”, has also called for such detention to be made illegal.<sup>51</sup>

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<sup>45</sup> Amnesty International, “No Real Will to Account: Shortcomings in Sri Lanka’s National Plan of Action to implement the recommendations of the LLRC”, Written Statement to the 21<sup>st</sup> session of the UN Human Rights Council, 31 August 2012, Index number: ASA 37/010/2012, <https://www.amnesty.org/en/documents/ASA37/010/2012/si/>.

<sup>46</sup> Report of the OHCHR Investigation on Sri Lanka (OISL), A/HRC/30/CRP.2, 16 September 2015, para 332.

<sup>47</sup> See in particular Section 7(3) and Section 9 of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979.

<sup>48</sup> UN General Assembly resolution 62/148, 17 December 2007, para. 15; UNGA res. 63/166, 12 December 2008, para. 20; UNGA res. A/RES/66/150 19 December 2011, para. 22.

<sup>49</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 11.

<sup>50</sup> See for instance Report of the Committee against Torture, UN Doc. A/52/44 (1997), paras. 121(d) (re Georgia); 146 (re Ukraine); UN Doc. 44(A/55/44) (2000), para. 61(b) (re Peru); UN Doc. A/58/44 (2003), para. 42(h) (re Egypt); UN Doc. A/59/44 (2004), para. 146(d) (re Yemen).

<sup>51</sup> UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

# 3. VICTIMS SEEK ANSWERS

**“Throughout the civil war in Sri Lanka, and throughout the other moments of violent conflict, it has been women – typically mothers and wives of the disappeared – who have been the face of all the disappeared, Tamil and Sinhalese, of this country; women, refusing to disappear, standing in for their loved ones who have been made invisible.”**

Subha Wijesiriwardena, 29 November, 2016

With a backlog of at least 60,000 to 100,000 alleged enforced disappearances in Sri Lanka since the late 1980s, there is no shortage of examples of frustrated justice. For this briefing, Amnesty International highlights a handful of cases that illustrate the impact of the crimes on families and communities, and demonstrate the burden placed on women demanding accountability and the lengths to which some families have gone to get attention to their demands. This includes braving very real threats of retaliation for their outspokenness.

For example, a witness who spoke before the LLRC in 2010 described how violence had claimed her family members, and threats she received after reporting the disappearance of her daughter in 2007:

**“... In 1985 my husband was shot dead but I don't know who shot him. My son ... went to the paddy field but did not return. He was 19 years old. On 31st December 1996 he was abducted and we do not know who abducted him. My son-in-law as shot dead on 28th April 2006. It was done by the Karuna faction.... My daughter [...] was making arrangements to go overseas, she got all her documents. She returned from Colombo on 2nd March 2007, a person ...from the TMVP faction came and called her. He took my daughter with him and she never returned.**

**She has three children and I am looking after them. On 7th March 2007 I complained to the Eravur Police that this person [...] threatened us saying that he will blow up our house with**

**bombs if you come and search.... I am looking after the children with great difficulty as we have no one to help us financially. They have warned us not to come in search of my daughter.”<sup>52</sup>**

In another case, in March 2014, Sri Lankan authorities arrested Balendran Jeyakumari, a Tamil mother who waged a very public campaign for truth and justice after she saw a photo of a boy she believed was her missing son in a government-run “rehabilitation” facility. She was detained without charge for nearly a year before being conditionally released in March 2015 pending completion of the investigation into police allegations that she had harbored a fugitive. She was arrested again in September 2015 and held for a week in connection with an allegation that she was involved in the theft of mine detectors. Since then Balendran Jeyakumari has experienced continued police inquiries.

For each of the women featured in this briefing, there are countless others who have suffered in isolation and anonymity.

## STATE SUSPECTED OF ENFORCED DISAPPEARANCE

### MOHAMMED HAKEEM

Sithy Ameena said told Amnesty International her son Mohammad Hakeem disappeared on the morning of 21 March 2009 in Colombo when he went out to buy fruit for a wedding. Mohammad was a trishaw driver. Sithy said that road cleaners who witnessed the abduction told the family that Mohammed was forced into a white van by a group of men she believes were police when he tried to help a passenger who was being arrested. When Mohammad eventually called his wife to say he would not be able to attend the wedding his voice shook. It was midnight when the family gave up searching for him and went to the Modera Police Station to file a missing person report. At first, Sithy Ameena said, the police did not want to record their statement. They eventually promised to make inquiries, but the family still has no answers.

Mohammad Hakeem’s disappearance has been devastating for the family, emotionally and financially as he was a crucial breadwinner. Sithy Ameena helps to support her family by selling clothes and looks after Mohammad Hakeem’s children. Despite the difficulty, Sithy Ameena continues to raise her son’s case with the authorities. She has sent inquiries to the President’s office, to the Governor of the Western Province and the Sri Lankan Human Rights Commission seeking answers.

Sithy Ameena has made three trips to the Human Rights Council in Geneva hoping for some sort of progress in her son’s case. She has been doing this for six years and says she will not give up the search for her son or the hope that he will someday return home.

### PRAGEETH EKNELIGODA

Although habeas corpus has not generally been an effective remedy in Sri Lanka for preventing enforced disappearances, since 2015 a handful of prominent habeas corpus cases have helped to expose the involvement of state agents in enforced disappearances, and uncover important evidence pointing to the possibility of high-level official involvement in these crimes. One of these is the case of Prageeth Ekneligoda.

On 24 January 2010, two days before Sri Lanka’s 2010 presidential election, Prageeth Ekneligoda, a freelance political cartoonist and frequent contributor to the *Lanka-e-News* website, was working late. Around 10 p.m. he called his wife Sandya to say he was on his way home. En route he called a friend to say he was going to meet one more contact; then his phone was switched off. Prageeth never made it home that night, and since then Sandya has waged a tireless campaign to uncover the truth about happened to him.

It was not the first time Prageeth had gone missing. Five months earlier Prageeth had been abducted by unidentified assailants who questioned him about an alleged associate. He was released the next day with a warning to “keep his mouth shut.” Sandya told Amnesty International she believes both abductions were

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<sup>52</sup> Testimony of Witness 19, Proceedings of public sittings of the Commission of Inquiry on Lessons Learnt and Reconciliation, Divisional Secretariat, Eravur Pattu, Chenkalady, 11 October 2010.

directly linked to Prageeth's attempts to expose corruption and human rights abuses by the government then in power. His cartoons often targeted official abuse of power, assaults on democracy and on media freedom. In 2008, Prageeth delivered a lecture alleging the army's use of chemical weapons in the armed conflict. Colleagues say Prageeth thought he was under surveillance in the days before his disappearance in January 2010.

When Prageeth disappeared, Sandya sprang into action. She lodged complaints at two police stations along his route home, but neither made any obvious effort to investigate her husband's disappearance. She appealed to the Human Rights Commission of Sri Lanka; the Attorney General; the President and his wife; the United Nations Working Group on Enforced and Involuntary Disappearances; and the International Committee of the Red Cross. She traveled to Geneva, Switzerland to attend the Human Rights Council session and press her husband's case.

Sandya's tenacity forced authorities to respond. In 2015, the Inspector General of Police ordered a fresh investigation into Prageeth's disappearance; 11 military intelligence personnel and two former LTTE members were detained for questioning (all were eventually released on bail). A CID investigator revealed that Prageeth had been held at Giritale army camp, where the suspects were stationed and then taken to Akkaraipattu camp in Ampara District. The court ordered high-ranking army officers to cooperate with the CID team, but lawyers say that cooperation has not always been forthcoming. A habeas corpus application in the Court of Appeal and a Magisterial Inquiry in the Homagama Magistrate's Court are underway: Sandya estimates that she has attended at least ninety court hearings.

Sandya's prominence has not protected her from reprisals by those who oppose her efforts to hold the army to account. In January 2016, a prominent member of the Buddhist nationalist Bodhu Bala Sena and other monks stormed the courtroom at Homagama and threatened Sandya; an anonymous poster campaign thought to be sponsored by the same group called her an LTTE supporter. Sandya became the first person to file a complaint under Sri Lanka's Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015. But the pace of proceedings has been slow. The first hearing was on 24 May 2016; it was then sent to the Attorney General's Department for further advice and opinion and, the next hearing was more than five months later.

As is the case for so many families of the disappeared, the Ekneligoda family lost Prageeth's income when he vanished and Sandya was left to raise their two sons on her own.

## **SINNAVAN STEPHEN SUNTHARARAJ**

Families have been discouraged from filing habeas corpus cases and perpetrators have used their fears for the safety of missing loved ones to extort money and to manipulate them into silence. In December 2015 and again in October 2016, Vathana Sunthararaj spoke to Amnesty International about the enforced disappearance of her husband Sinnavan Stephen Sunthararaj and her efforts to seek the truth.

Stephen Sunthararaj, a project manager with the Centre for Human Rights and Development (CHRD), worked in Jaffna on children's rights before moving to Colombo after he allegedly uncovered information linking a political party to a child trafficking ring.<sup>53</sup> On the evening of 7 May 2009, Stephen was abducted by armed, uniformed men in broad daylight from a busy intersection in Colombo whilst travelling with his wife and three children in a friend's car. He has not been seen since. Just hours earlier Stephen had been released from more than two months in police detention without charge under emergency regulations after Vathana filed a successful fundamental rights petition with the Supreme Court challenging his unlawful detention<sup>54</sup>. She told Amnesty International that soon after Stephen's abduction in May, she received a phone call from a man speaking Tamil demanding ransom money, which the family quietly paid. The caller accurately described the shirt Stephen had been wearing when he was abducted and said that if Vathana

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<sup>53</sup> See Colombo Telegraph, "The Person Who Exposed EPDP's Child Prostitution Was Abducted and No Information So Far", 14 September 2013, <https://www.colombotelegraph.com/index.php/the-person-who-exposed-epdps-child-prostitution-was-abducted-and-no-information-so-far/>. Sunthararaj coordinated Jaffna's Child Protection Committee from September 2002 to 2006 and was employed by World Vision from April 2006 to April 2007 on child protection issues. He previously worked in the department of probation and childcare services, and the Jaffna Diocese of the Church of South India.

<sup>54</sup> On 12 February 2009, assailants believed to be members of the Special Task Force (an elite police commando unit) had attempted to force Stephen Sunthararaj into a vehicle. The incident occurred near the CHRD office and when colleagues intervened, his assailants turned him over to the neighborhood police, who detained him without charge under emergency regulations.

did not pay, Stephen's captors would "finish him." Vathana later received a call on her mobile phone acknowledging that the money she sent had been received; when she asked where her husband was and the caller said "he will come; you wait and see," and cut the line. But Stephen never returned.

In December 2009, Palitha Kohana, then Permanent Secretary to the Ministry of Foreign Affairs reportedly told US and EU diplomats who raised the case that Stephen Sunthararaj had been arrested, not abducted, and that he was in state custody.<sup>55</sup> This was never confirmed. Vathana Sunthararaj told Amnesty International that she reached out to another government official after Stephen's disappearance; she said she was urged to trust him and was discouraged from filing a habeas corpus petition, but ultimately learned nothing new from the contact. In 2010, Vathana wrote to the Office of the President of Sri Lanka, urging him to reveal Mr. Sunthararaj's place of detention, and calling for his immediate release. She received no response.

In September 2016, Vathana travelled to Geneva to bring her husband's case before the Working Group on Enforced and Involuntary Disappearances. Shortly before her trip, she and her mother-in-law had a strange encounter with two people claiming to be intelligence personnel; Vathana believes they were attempting to prevent her from bringing Stephen's case before the UN. On 25 August, two people who identified themselves as army intelligence personnel approached Stephen's mother in Kilinochchi, claiming Stephen was about to be released and asking her to accompany them to the handover. She went with them immediately. The pair took Stephen's mother 340km from Kilinochchi to Badulla in central Sri Lanka, a drive of over 6 hours, to a house belonging to an army officer. The officer assured her that Stephen would indeed be released soon, but in Colombo not in Badulla. The next day the trio traveled to the town of Kalutara, another 200km and then on to Colombo where she and the two operatives met Vathana. They asked Vathana's permission to release Stephen to his mother, to which she agreed. They also asked Vathana to accompany them to the handover, but she politely refused saying she could not leave her children alone. The same night the two took Vathana's mother-in-law back to her home in Kilinochchi with assurances that Stephen would be released soon. That was the last the family heard of them. Vathana believes that they never intended to return Stephen and that the whole incident was a charade meant to keep her from traveling to Geneva.

## **KUGAN MURUGANANDAN AND LALITH WEERARAJ**

Political activists Lalith Kumara Weeraraj and Kugan Muruganandan disappeared in Jaffna on 9 December 2011. The two were preparing a press conference for International Human Rights Day (10 December) to publicise a demonstration denouncing human rights violations against Tamil civilians by the Sri Lankan military and calling for the release of detainees held without charge since the end of the conflict. The event was set to include families of the disappeared. According to Muruganathan Janatha, Kugan's wife, the two men left home on Kugan's motorbike at around 5 pm, and never returned. Their families are still waiting for someone to tell them what happened to them.

Lalith's father Arumugan Weeraraj described to the BBC how his son began receiving threatening phone calls about a month before he disappeared.<sup>56</sup> Arumugan Weeraraj answered one of the anonymous calls and was told "keep your son at home or we will keep him in Jaffna."<sup>57</sup> In March 2011, Lalith was reportedly organizing a demonstration in Mannar when he was abducted and held overnight by army personnel who interrogated him in an abandoned factory; in November 2011 he and others were beaten by armed men in Jaffna following a protest against enforced disappearances.<sup>58</sup> After the disappearance of the two men in Jaffna, Lalith's father said he received a phone call saying that his son had been killed. Family members filed several complaints and missing persons reports with local authorities, but received no information.

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<sup>55</sup> Submission by Front Line Defenders – the International Foundation for the Protection of Human Rights Defenders, Sri Lanka UPR Session: 14th Session of UPR, 22 October - 5 November 2012 Submitted on: 23 April 2012, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/FLD\\_UPR\\_LKA\\_S14\\_2012\\_FrontLineDefenders\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/FLD_UPR_LKA_S14_2012_FrontLineDefenders_E.pdf)

<sup>56</sup> BBC Sinhala, "Disappeared activist 'received death threats'," 14 December 2011, [http://www.bbc.com/sinhala/news/story/2011/12/111214\\_father.shtml](http://www.bbc.com/sinhala/news/story/2011/12/111214_father.shtml)

<sup>57</sup> BBC Sinhala, Disappeared activist 'received death threats'," 14 December 2011, [http://www.bbc.com/sinhala/news/story/2011/12/111214\\_father.shtml](http://www.bbc.com/sinhala/news/story/2011/12/111214_father.shtml)

<sup>58</sup> Watchdog, "Attacks against Dissent Sri Lanka – Northern situation," 24 February 2012, 9:37 pm, Part 3 – Northern situation, <http://transcurrents.com/news-views/archives/8591>

Murugananthan Janatha said a few days after Kugan disappeared, she found her husband's motorbike parked in the compound of the Atchchuveli Police Station where she had gone to collect a copy of her complaint regarding Kugan's disappearance. The police told her it had been found by the Kopai Police on 13 December, parked near a Hindu temple. She said the police denied holding the two activists. Janatha heard that alleged witnesses may have been seen the two men being forced into a van by armed men.<sup>59</sup>

**“According to my neighbour, the abduction had been witnessed by several people including the Nirveli Grama Sevaka (Village Official). The men on the motorbike had stopped the bike on which my husband was travelling near the Aththiyar Government School and opposite an abandoned glass factory. Lalith and Kugan had been forced into the white van by the men and the bike had been left on the road - Murugananthan Janatha, 2012**

The villagers and the Grama Sevaka had informed the Kopai Police who had come to scene and taken the bike away that evening (9 December).”

Sometime later there was a rumour that the two were held in a detention centre in Jaffna district, but there was never any official confirmation.<sup>60</sup>

Janatha told a gathering of the Collective against Abductions and Disappearances in late March 2012 that she had recently been intimidated by uniformed men who came to the house when she and her young daughter were home alone and tried to compel her to sign a document in Sinhala that she could not read. When she refused, she said the men photographed her and her daughter. The incident reportedly occurred on 22 March 2012, the same day the UN Human Rights Council passed Resolution 19/1 “Promoting reconciliation and accountability in Sri Lanka” calling on the Sri Lankan government to address alleged violations of international law.<sup>61</sup>

In January 2016, the Frontline Socialist Party (FSP), with which the two men were affiliated, demanded that the Sri Lankan government reopen stalled police investigations into the disappearances of Lalith Kumar Weeraraju and Kugan Muruganandan, after a parliamentarian who had been a Cabinet Minister in the previous government reportedly claimed that the two activists had been killed.<sup>62</sup> A habeas corpus case filed by the families of both men has encountered repeated delays. The Minister in question twice failed to respond to court summons before the court issued a warrant for his arrest if he did not appear. He attended a hearing in early February 2016 in the Jaffna Magistrates Court, but the proceedings were postponed until 13 May due to a “technical problem.”<sup>63</sup> On 12 August 2016, the hearing was postponed to 9 December when the police official responsible for the case failed to appear in court.<sup>64</sup>

Families of both activists have submitted complaints to the UN Working Group on Enforced and Involuntary Disappearances. In 2011, the Working Group transmitted the cases to the Sri Lankan Government under its urgent action procedure but did not receive clarification.<sup>65</sup>

## SECRET DETENTION EXPOSED

**“We have been going to Courts and appearing before the justices for seven years. But we haven't found our children. ...For seven years, no witnesses were taken to the Courts. Time has**

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<sup>59</sup> Statement of Murugananthan Janatha, Colombo, 6 January 2012; for more see, Amnesty International, “Sri Lanka's Assault on Dissent”, 30 April 2013, Index number: ASA 37/003/2013, p. 37, <https://www.amnesty.org/en/documents/asa37/003/2013/en/>

<sup>60</sup> OMCT World Organisation Against Torture, “Sri Lanka: Enforced disappearance of Messrs. Lalith Kumar Weeraraja and Kugan Muruganandan”, Urgent Appeal, 15 December 2011, LKA 002 / 1211 / OBS 141, <http://www.omct.org/human-rights-defenders/urgent-interventions/sri-lanka/2011/12/d21560/>.

<sup>61</sup> Young Asia TV, “Threatened and intimidated - Kugan's wife speaks out”, 3 April 2012, <https://www.youtube.com/watch?v=BvvrEu3bAlU>

<sup>62</sup> Independent Television Network News, “Frontline Socialist Party lodges another complaint with the Police on Lalith Kugan's disappearance”, 5 January 2016, <http://www.itnnews.lk/local-news/frontline-socialist-party-lodges-another-complaint-with-the-police-on-lalith-kugans-disappearance/>.

<sup>63</sup> News First, “Kumaran Pathmanathan case taken up in the Court of Appeal”, 3 February 2016, <http://newsfirst.lk/english/2016/02/kumaran-pathmanathan-case-taken-up-in-the-court-of-appeal/127191>.

<sup>64</sup> Hiru News, “Lalith, Kugan Disappearance Case Postponed to Dec. 9”, 13 August 2016, <http://www.hirunews.lk/140506/lalith-kugan-disappearance-case-postponed-to-dec-09>.

<sup>65</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 28 January 2013, A/HRC/22/45.

## **come to see the truth prevail...” - Jennifer, mother of missing student Jamaldeen Dilan, age 24, to journalist Piyuma Fonseka of the *Daily Mirror*, August 2015**

In 2012, Amnesty International reported testimony by a former LTTE member accusing the Navy in Trincomalee of operating a secret detention facility within the Navy dockyards – a secured area that includes the ruins of British and Dutch fortifications.<sup>66</sup> He described underground tunnels where he said Navy Intelligence detained, tortured and killed prisoners they suspected of ties to the LTTE there; two of the victims, the witnesses claimed were killed, were minors. The International Truth and Justice Project reported on the existence of a facility at this location in considerable detail in July 2015.<sup>67</sup>

Seven years of effort by families to find their abducted children finally forced official acknowledgment of the existence of this secret detention facility. A CID investigator testifying in a habeas corpus case brought by the families of five students in their twenties who disappeared from a Dehiwala neighbourhood of Colombo in 2008, said that the youths and others had been detained by Navy personnel under the command of a Lieutenant Commander in a secret underground facility in the Trincomalee Navy Camp.<sup>68</sup> He also testified to the existence of another detention facility on Chaitya Road in Colombo (at the time a highly secured road where Navy headquarters and the Terrorist Investigation Division of the police were located) where the students were held before they were taken to Trincomalee.<sup>69</sup> Police are reported as stating that they had strong evidence that at least 11 people (most or all young people) abducted in 2008 were held in the Trincomalee facility, and that they had found skeletal remains here.<sup>70</sup>

Media reports indicate that police suspect Navy officers may have been involved in 17 additional similar cases.<sup>71</sup> The International Truth and Justice Project called for the investigation to be broadened beyond the initial complaints and said based on interviews with former detainees it believed at least 60 people were held at the site for as long as three years.<sup>72</sup> In November 2015 the Working Group on Enforced or Involuntary Disappearances (WGEID) visited underground detention cells at the Trincomalee Navy base and concluded that many people had been held there, and some as late as 2010, judging from an apparent date scratched into the wall.<sup>73</sup> According to Sri Lanka's *Sunday Leader*, WGEID delegates told the newspaper that “the detention cells at the Trincomalee Navy camp could not have been in operation without the knowledge of the top officials.”<sup>74</sup>

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<sup>66</sup> Amnesty International, “Locked Away; Sri Lanka’s Security Detainees”, March 2012, Index number: ASA 37/003/2012., <https://www.amnesty.org/en/documents/asa37/003/2012/en/>.

<sup>67</sup> International Truth and Justice Project, “A Still Unfinished War: Sri Lanka’s Survivors of Torture and Sexual Violence 2009-2015”, July 2015, pp 76 – 82, [http://www.itjpsl.com/assets/stoptorture\\_report\\_v4\\_online.pdf](http://www.itjpsl.com/assets/stoptorture_report_v4_online.pdf).

<sup>68</sup> Daily Mirror, “Have they been killed or hidden?”, 4 August 2015, <http://www.dailymirror.lk/82249/have-they-been-killed-or-hidden>.

<sup>69</sup> Sri Lanka Mirror, “Navy extortionists kill 28,” 20 February 2015, <http://archive2.srilankamirror.com/news/item/2304-navy-extortionists-kill-28>; and Tamil Diplomat, “Secret Detention Camps of Sri Lanka Navy Detected in Colombo and Trincomalee”, 11 July 2015, <http://tamildiplomat.com/secret-detention-camps-of-sri-lanka-navy-detected-in-colombo-and-trincomalee/>.

<sup>70</sup> Sri Lanka Brief, “Skeletal Remains Found in Sri Lanka Secret Navy Prison Where Missing Persons Detained”, 29 January 2016, <http://srilankabrief.org/2016/01/skeletal-remains-found-in-sri-lanka-secret-navy-prison-where-missing-persons-detained/>.

<sup>71</sup> News 1st, “Mass abduction case taken up in courts again – attorney alleges several navy top brass of hindering investigations”, 9 July 2015, <http://newsfirst.lk/english/2015/07/mass-abduction-case-was-taken-up-again-in-courts-attorney-alleges-several-navy-top-brass-of-hindering-investigations/103156>. See also, Sri Lanka Mirror, “Navy extortionists kill 28,” 20 February 2015, <http://archive2.srilankamirror.com/news/item/2304-navy-extortionists-kill-28>.

<sup>72</sup> International Truth and Justice Project, “Press Release: Trincomalee Secret Torture Site,” 20 November 2015, <http://www.itjpsl.com/assets/press/20.11.15-Press-Release-TIJP-on-Trincomalee-Secret-Site-2.pdf>.

<sup>73</sup> Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka, 8 July 2016, A/HRC/33/51/Add.2, See also, Sri Lanka Brief, “Skeletal Remains Found In Sri Lanka Secret Navy Prison Where Missing Persons Detained”, 29 January 2016, <http://srilankabrief.org/2016/01/skeletal-remains-found-in-sri-lanka-secret-navy-prison-where-missing-persons-detained/>, and Inter Press Service, “UN Discovery of Secret Detention Centre Revives Nightmares”, 21 December 2015, <http://www.ipsnews.net/2015/12/un-discovery-of-secret-detention-centre-reopens-all-nightmares/>.

<sup>74</sup> Sunday Leader, “Names of Officers Exposed On Trinco Secret Cells”, 22 November 2015, <http://www.thesundayleader.lk/2015/11/22/names-of-officers-exposed-on-trinco-secret-cells/>.



# BEARING WITNESS TO A MASS DISAPPEARANCE

## ALLEGED DISAPPEARANCE OF A FAMILY WITH SMALL CHILDREN

My son-in-law, Nadesu Muralitharan (37), served the LTTE's Intelligence Unit, until the end of the war. My daughter, Krishnakumari (30) and their children Saariyan (5) and Abitha (3) surrendered to the military together with Nadesu, on 18 May 2009. I visited all the detention centres and I could not find my family members. They surrendered along with several senior combatants of the LTTE, accompanied by Rev. Fr. Francis Joseph. The surrender took place in Vattuvaagal in the Mullaithivu District and I witnessed their collective surrender.

I have searched everywhere for my son-in-law, my daughter and my two grandchildren. Almost four years have gone by since the war ended, but I have not heard a single word about my family members after their surrender to the security forces in Mullaithivu. I have decided to file a writ of habeas corpus.”

Ponnamma Kanthasamy, Kandavalai, Kilinochchi District, 2013<sup>75</sup>

Many thousands of enforced disappearances were reported during Sri Lanka's long armed conflict. People were taken from their homes, from checkpoints, from displacement camps and in search operations in villages, towns and neighborhoods in many parts of the island. One of the largest alleged cases of enforced disappearances in the past ten years occurred on 18 May 2009 when according to family members of the missing, over 100 LTTE cadres surrendered to the army and subsequently disappeared.

The cadres surrendered to the Sri Lankan army near the Vadduvaikkal Bridge in Mullaithivu. Some were reportedly in the company of Father Francis Joseph, a Catholic Priest who also disappeared. According to surviving family members who witnessed their surrenders, they were reportedly transported from the site by the army in a convoy of buses: their fate and whereabouts since then remain unknown.

There are also allegations that some family members, including children accompanied the surrendering LTTE members and were never seen again. Ananthi Sashitharan, wife of Ellilan (LTTE political wing leader for Trincomalee) and now a Tamil National Alliance party (TNA) politician was among the first to publicly allege mass disappearances of people who surrendered to the army in 2009. Several other women provided similar testimony to the LLRC in 2010. The excerpt below describes some of their testimony:

**“We saw the number 20100725 engraved on a wall and we guess it is a date – July 25, 2010. All that we saw during our visit bears evidence to the fact that the location which had earlier been used for storing arms, was systematically used as a detention centre,” - WGEID member Tae-Ung Baik to journalists Amantha Perera, Inter Press Service, December 2015.**

On 26 August 2013, 13 families who say they witnessed missing relatives surrendering to the army in Mullaithivu filed habeas corpus applications seeking information about their whereabouts. One woman alleged that she last saw her daughter, son-in-law and their three young children in the custody of the 58th Division of the Sri Lankan Army.

In September 2013, the High Court instructed the Vavuniya District Court to commence preliminary investigations into the whereabouts of these missing family members and Judge V. Chandramani issued notices on the Commander of the Army and the General Officer in command of the 58th Division at Mullaithivu to appear. The case was subsequently transferred to Mullaithivu where it was repeatedly postponed as the court sought army records claimed by the 58th Division Commander to be kept at the Mullaithivu camp listing all persons taken into custody in 2009. In February 2016 the Mullaithivu Magistrate ordered him to submit the list to the court before 19 April 2016. In late September 2016, the Magistrate ordered the CID to investigate after ruling that documents filed by the army were not a complete record of all those who had been detained by army but instead reflected only those people who had completed “rehabilitation.”

<sup>75</sup> Dushiyanthini Kanagasabapathipillai, “Anguish of Uncertainty Felt by Family Members of “Missing” LTTE Surrendees”, 15 May 2013, <http://dbsjeyaraj.com/dbsj/archives/21331>.

**REPORT OF THE COMMISSION OF INQUIRY ON LESSONS LEARNT AND RECONCILIATION, NOVEMBER 2011,  
“REPRESENTATIONS TO THE COMMISSION REGARDING ALLEGED DISAPPEARANCE AFTER  
SURRENDER/ARREST” - EXCERPTS, PAGES 110-112.**

4.246. The wife of a former LTTE Political Wing member stated that her husband had surrendered on 18th May 2009 at Wattuwal along with others – she said there was a long queue may be thousands. She further stated that her child had been sick and she had explained this to the Army who had let her go and taken her husband in. She stated that the following former LTTE cadres also surrendered with her husband – Kutty, Elamparathy, Babu, Lawrence Thilakar and Yogi. Her husband had surrendered with father Francis Joseph. According to her, when she had tried to follow her husband, the Army officers had identified him and told her that she need not go with him. She said she had had no news of her husband.<sup>76</sup>

4.247. The wife of another former LTTE cadre<sup>77</sup> appearing before the Commission at the District Secretariat in Madhu stated that on 16th May 2009 she and her three children had come to Mullaittivu from Mullaivaikkal. Her husband had not accompanied them but had joined them on 17th May 2009. On 18th May 2009 in the morning he had surrendered to the Army at Mullaittivu together with some important LTTE cadres (Elamparathy, Kumaran, Ruben, Babu and Velavan). They had surrendered accompanied by Father Francis Joseph and had been taken away in a bus. She stated that she had not heard from him since then. The Commission made inquiries regarding Father Francis Joseph from Father Muralitharan, the Parish Priest and Assistant Administrator of Madhu Church, and he stated that Father Francis Joseph had been a political teacher of the LTTE and people had told him that Father Francis Joseph had been in the conflict area until the end with the LTTE and was supposed to have surrendered and since then his whereabouts were unknown.

4.248. During its sittings in Ariyalai on 11th November 2010, the wife of a former LTTE member stated that they had come to Wattuwal on 17th May 2009 and her husband had surrendered to the Army on 18th May 2009. She said that the Army using loudspeakers called people to surrender indicating that all those who surrendered will be given common pardon. She further stated that the others who went with her husband in the bus were Puthuvai Rathinathurai – LTTE poet, Lawrence Thilakar, and Baby Subramaniam. She said that she has had no news of her husband.<sup>78</sup>

4.249. During its sittings in Kandawalai, the wife of an ex-LTTE employee stated that on 17th May 2009 she and her husband had crossed over to the Army-held area at Wattuwal and on 18th May 2009 in the morning there had been an announcement around 9.30 a.m. or 10 a.m. that anyone who was in the LTTE even for a day should surrender. She further stated that her husband was not a member of the LTTE but a paid employee who was in charge of taking photographs and operating videos for the LTTE. On that date a lot of people led by Father Joseph Francis had surrendered including Yogi and Rathinathurai. She said that she has had no news of her husband.<sup>79</sup>

## **ABDUCTIONS BY THE LTTE**

The LTTE also committed many human rights abuses, some of which may amount to crimes under international law. Witnesses and UN investigators have reported that the LTTE refused civilians permission to leave the conflict zone in the final months of the war, killing some civilians who tried to escape, using them as hostages and, at times, as human shields, and implemented a policy of forced recruitment of both adults and children that intensified as the conflict entered its final stages, many of whom have never been

<sup>76</sup> Representations made in camera before the LLRC.

<sup>77</sup> Representations made by a civilian before the LLRC at Madhu on 08th January 2011. Transcript No. LLRC/FV/08.01.11/01.

<sup>78</sup> Representations made by a civilian before the LLRC at Ariyalai on 11th November 2010. Transcript No. LLRC/FV/11.11.10/01.

<sup>79</sup> Representations made by a civilian before the LLRC at Kandawalai on 19th September, 2010. Transcript No. LLRC/FV/19.09.10/01.

accounted for.<sup>80</sup> The LTTE also detained thousands of men and women arbitrarily, many on an incommunicado basis, in a system of prisons which often imposed punitive labour on their inmates.<sup>81</sup> Without access to the outside world, their families had no means of ascertaining their fate and whereabouts. Detainees included persons who had attempted to escape the conflict zone, those who resisted forcible recruitment or attempted to shield family members or friends from forcible recruitment, as well as persons suspected of being linked to the Sri Lankan authorities.<sup>82</sup>

Amnesty International has received credible accounts of unlawful killings of these detainees, particularly in early 2009 as the LTTE anticipated the fall of the areas it controlled to the Sri Lankan military. According to the University Teachers for Human Rights (Jaffna) a former LTTE prisoner reported witnessing a massacre of prisoners on 9 February 2009 at an LTTE prison camp called “Tango Ten.” The witness alleged that when the Sri Lanka Army was nearing the camp, intelligence chiefs at Tango Ten ordered the release of ten prisoners followed by the execution of 140 others; executions were allegedly carried out in a nearby jungle and the bodies were burnt. The prisoners who were executed were allegedly those held for security or political reasons, including members of other Tamil groups and Sinhalese or Muslims suspected of security forces connections.<sup>83</sup>

Another witness who spoke to the organization described about 150 prisoners being subjected to summary execution over the course of five years in various LTTE prisons between about 2003 and 2008. The witness stated that “many more” were killed in 2009, during the final months of the conflict. The same witness stated he had received reports from another former detainee regarding the execution of 35 prisoners in early 2009. A further 45 people were reported to have been killed in prison as a result of being chained without regard for their safety during air raids and bombings.<sup>84</sup>

**“...a victim described an LTTE prison where new recruits were held before being taken to a training camp in February 2009. Some of those held there had reportedly tried to escape after being recruited. Some reports also indicate that those held were chained together by the legs in small groups and were beaten if they complained.” - Report of the OHCHR Investigation on Sri Lanka, September 2015**

With no official records or details available of detainees' imprisonment, execution or death while in detention, family members remain unable to access information regarding the fate and whereabouts of victims, nor to have their remains returned for funeral rites. Illustrating the nature of such abductions during wartime, during LLRC hearings many families came forward looking for children who had been forcibly recruited by the LTTE. With no information as to their fate or whereabouts, it was unknown years after the end of the war whether the children had been internally displaced, had been taken into army custody or if they had been killed during the conflict or by the LTTE.

For example, a witness testifying before the LLRC at Pachchillapillai described how his/her son – a teenager at the time - was forcibly recruited by the LTTE:

**“On the 28th March 2008 while I was entering into the Army controlled area my child was forcibly taken by the LTTE. Since then I have been trying to trace my child but I don't know where he is. I informed of my missing son to the Human Rights Commission and I received an**

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<sup>80</sup> See Report of the UN Secretary-General's Panel of Experts on Accountability in Sri Lanka, March 2011, at para. 237-243; [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf), see also Report of the OHCHR Investigation on Sri Lanka (OISL) 16 September 2015, A/HRC/30/CRP.2, in particular Chapters XI, XII, and XIV.

<sup>81</sup> Before the armed conflict ended virtually all credible information about the LTTE's prison system came from the University Teachers for Human Rights (Jaffna) (UTHR(J)), a Sri Lankan human rights organization that did extensive research on the LTTE's system of prisons, see for example, UTHR(J) Report No 10, Rays of Hope Amidst Deepening Gloom, Chapter 4, “The Jaffna Gulag,” 15 January 1993; and UTHR(J) Special Report No: 34, “Let Them Speak: Truth about Sri Lanka's Victims of War”, 13 December 2009, <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>. When the armed conflict ended the Sri Lankan media began to report on the discovery of LTTE detention and torture facilities and the plight of LTTE prisoners, particularly prisoners of war. See for example Ceylon Today, “Sri Lanka: LTTE Ran Vietnam Style Torture Camp”, 21 February 2016, (reproduced by Sri Lanka Brief: <http://srilankabrief.org/2016/02/sri-lanka-ltte-ran-vietnam-style-torture-camp/>) and The OISL report also contains some references to ill-treatment of prisoners by the LTTE, see Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP, p. 140, para 644.

<sup>82</sup> UTHR(J), “Let Them Speak: Truth about Sri Lanka's Victims of War”, Special Report No: 34, Part VIII, Addendum: “The End of the LTTE's Vanni Gulag”, 13 December 2009, pp. 153-158; <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>.

<sup>83</sup> UTHR(J) “Let Them Speak: Truth about Sri Lanka's Victims of War”, Special Report No: 34, Part VIII, Addendum: “The End of the LTTE's Vanni Gulag,” 13 December 2009, pp. 153-158; <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>.

<sup>84</sup> UTHR(J) “Let Them Speak: Truth about Sri Lanka's Victims of War”, Special Report No: 34, Part VIII, Addendum: “The End of the LTTE's Vanni Gulag,” 13 December 2009, pp. 153-158; <http://www.uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm>.

**acknowledgement letter saying that my child is living. They said that he is living ... but I was not shown the child and I was not informed of where he is” - LLRC Witness 3, Pachchillapillai, 18 September 2010.**

The witness went on to describe how efforts to address various courts in response to the letter have failed to result in any information regarding the son's whereabouts, nor to provide proof that he is in fact still alive.<sup>85</sup>

Compounding these abuses is the failure by the Sri Lankan authorities to fulfil or frequently even to acknowledge their responsibilities under international law to take action to investigate abductions and other abuses committed by non-state actors and hold perpetrators to account. For example, a mother seeking her son, who was abducted by the LTTE (one of many such complaints) approached the LLRC in Nedunkerny. But a Commissioner commented that since the abuse was perpetrated by the LTTE it was not the Sri Lankan government's responsibility:

**“Since the child was taken by the LTTE the government finds it difficult because it's not the government's responsibility but please tell this also that we are heartfelt about her loss and the Chairman has undertaken to check with the security authorities whether they have found him in any place and if so we will get back.”<sup>86</sup>**

Under international human rights law the state has a responsibility to protect individuals from abuse, whether the alleged perpetrator is a government agent or a non-state actor. This includes conducting prompt, impartial and effective investigations, and ensuring that victims and their families have effective access to justice and to remedies, including reparations. As a state party to the International Convention for the Protection of All Persons from Enforced Disappearance the government also has an obligation under Article 3 to investigate such cases and bring those responsible to justice.

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<sup>85</sup> Testimony of S, Witness 3 before the Lessons Learnt and Reconciliation Commission, Pachchillapillai Divisional Secretariat, 18 September 2010.

<sup>86</sup> See Amnesty International, “Sri Lanka: When Will They Get Justice? Failures of Sri Lanka's Lessons Learnt and Reconciliation Commission”, 7 September 2011, Index number: ASA 37/008/2011, p. 35-36, <https://www.amnesty.org/en/documents/asa37/008/2011/en/>

# 4. FLAWED EFFORTS TO ESTABLISH THE TRUTH

**“I have made my comments to various national and international persons regarding these facts. ...I told the commissioners that I want to know what happened to all those? There was no answer. I told them the next time when another commission comes looking for these facts, I won't be there and you won't be there .... Perhaps all relevant parties may have died when the next commission comes around”**

Thangamuthu Jayasingam, 4 September 2015<sup>87</sup>

Dr. Thangamuthu Jayasingam, now Vice Chancellor of Eastern University was the Officer in Charge of the Vantharumoolai refugee camp in 1990. He spoke these words in reference to the so called 'Eastern University Massacre.' In this case, on 5 September 1990, 158 young Tamil men were rounded up by the army from what was then the largest displacement camp in Sri Lanka, housing more than 40,000 people on the Eastern University campus in Vantharamoolai, Batticaloa District. That morning, army personnel arrived at the camp in a government-owned bus. An announcement was made using an amplifier fitted to a van directing all camp residents to queue up according to age and to walk past a panel of masked individuals who indicated who should be taken into custody. Those identified were taken away in front of thousands of witnesses, Amnesty International published the names of the victims in 1991.<sup>88</sup> None of them have been seen again.

In September 1993, a now-defunct government agency, the Human Rights Task Force (HRTF) which for a short time monitored the welfare of detainees, published an account of the incident and named four officers who witnesses said were involved. The HRTF called for a proper investigation, and indicated that there were witnesses willing to testify but no investigation was forthcoming.<sup>89</sup> In 1994, a Presidential Commission of

<sup>87</sup> Colombo Telegraph, "Eastern University Massacre: Missing, Missing, Missing for 25 Years", 4 September 2015, Opinion, <https://www.colombotelegraph.com/index.php/eastern-university-massacre-missing-missing-missing-for-25-years/>.

<sup>88</sup> Amnesty International, "Sri Lanka -The Northeast: Human rights violations in a context of armed conflict", September 1991, Index number: ASA 37/14/91, <https://www.amnesty.org/en/documents/asa37/014/1991/en/>.

<sup>89</sup> Amnesty International, "The "disappearances" from Eastern University Refugee Camp on 5 September 1990", October 1993, Index number: ASA 37/19/93, <https://www.amnesty.org/en/documents/asa37/019/1993/en/>.

Inquiry again investigated the case and its report, released in 1997, named suspected perpetrators.<sup>90</sup> But once again there was no official follow up. These failures illustrate the ineffectiveness of *ad hoc* bodies tasked with investigating enforced disappearances in combating Sri Lanka's pervasive climate of impunity.

## COMMISSIONS OF INQUIRY

**“We go everywhere they tell us to go to register our complaint. Commissions, Police, ICRC, the list is endless. Then we go to various camps and police stations. We continue to go everywhere with the hope we will find them... We have begged for money just to get photocopies, how many photocopies ...all to submit to various people in the hope of getting our children back.” - Participant in Public Consultation Meeting, Kandavalai, 2016**

Sri Lanka has a long history of *ad hoc* bodies tasked with investigating enforced disappearances. Despite repeated failures of these bodies to deliver the truth, poor or nonexistent witness protection and often callous treatment of bereaved witnesses;<sup>91</sup> many thousands of victims have come forward to testify. The number of times some people have testified before different bodies without any tangible result highlights the strength of their determination to know the truth and achieve justice.

Since the establishment of the first Presidential Commission to investigate reports of enforced disappearances in 1991, families seeking missing loved ones have testified before at least 10 such *ad hoc* bodies but few have received answers.<sup>92</sup>

## PRESIDENTIAL COMMISSION TO INVESTIGATE COMPLAINTS REGARDING MISSING PERSONS (PARANAGAMA COMMISSION) 2013

Former President Mahinda Rajapaksa appointed the Presidential Commission to Investigate Complaints Regarding Missing Persons (Paranagama Commission) on 15 August 2013, with a mandate to investigate complaints of abduction or disappearance of residents of the northern and eastern provinces affected by armed conflict between 10 June 1990 and 19 May 2009. The Commission's mandate was expanded by the previous administration to also address alleged war crimes, with help of international lawyers hired by the Rajapaksa government.

The current government extended the term of the commission until July 2016 and delivered its final report to the President in July. The Commission had major shortcomings in both its treatment of witnesses and general operations and lacked the capacity to deal effectively with its vast responsibilities. Throughout its three-year tenure there were allegations that witnesses were threatened, harassed and intimidated; that Commissioners guided witness testimony or showed partiality, and that translating services were grossly inadequate.<sup>93</sup>

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<sup>90</sup> ["Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces," September, 1997, [http://www.disappearances.org/news/mainfile.php/frep\\_sl\\_ne/](http://www.disappearances.org/news/mainfile.php/frep_sl_ne/).

<sup>91</sup> See for examples Amnesty International, "Locked Away: Sri Lanka's Security Detainees", Annex: Presidential Directives On Protecting Fundamental Rights of Persons Arrested and / or Detained, March 2012, Index number: ASA 37/003/2012, <https://www.amnesty.org/en/documents/asa37/003/2012/en/>.

<sup>92</sup> Amnesty International, "Sri Lanka: Twenty Years of Make-Believe. Sri Lanka's Commissions of Inquiry", 11 June 2009, Index number: ASA 37/005/2009, <https://www.amnesty.org/en/documents/ASA37/005/2009/en/>.

<sup>93</sup> See, Report of the OHCHR Investigation on Sri Lanka, 16 September 2015, A/HRC/30/CRP.2, Pages 105-108; see also Centre for Policy Alternatives, "Concerns on the Proceedings of the Presidential Commission to Investigate into Complaints Regarding Missing Persons", 2 October 2014, <http://www.cpalanka.org/concerns-on-the-proceedings-of-the-presidential-commission-to-investigate-into-complaints-regarding-missing-persons/>.

Although the Commission had received at least 19,000 civilian complaints (most of which were written submissions), held 14 public sittings and claimed to have made 6,500 inquiries by the time it wrapped up, it failed to deliver truth to victims due to ineffective or in many cases non-existent investigations of complaints and lack of witness protection.

In September 2014, the Centre for Policy Alternatives examined the progress of the Commission to that point. It concluded that had the body received no further complaints from that time forward at the rate it was working it would have taken 13 years to hear the complaints it had already received.

In June 2016, as the Paranagama Commission ended its operations and announced that it would archive its documentation for use by the Office on Missing Persons (discussed below).

Amnesty International learned that as the Commission was wrapping up its operations, families of the disappeared, who had sought its assistance, had received letters stating that the Commission had found no evidence in relation to their cases and that they would be informed if there were new developments.

# 5. INITIATIVES SINCE RESOLUTION 30/1, 2015.

## RATIFICATION AND IMPLEMENTATION OF THE ENFORCED DISAPPEARANCES CONVENTION

Having ratified the International Convention for the Protection of All Persons from Enforced Disappearance in May 2016, Sri Lanka has expressly committed to ensuring that no one will be subject to enforced disappearance and to take all appropriate measures to search for, locate and release victims and, in the event of death, to locate, respect and return their remains to their families.<sup>94</sup> It must criminalise enforced disappearance under Sri Lankan law<sup>95</sup> and ensure that all such crimes are promptly, thoroughly and impartially investigated even if there has been no formal complaint; and that those responsible are brought to justice.<sup>96</sup> This includes those who commit the crime as well as superiors bearing responsibility.<sup>97</sup> It also includes persons or groups who commit disappearances acting without authorization, support or the acquiescence of the state.<sup>98</sup>

Sri Lanka has committed to exercising universal jurisdiction over persons accused of the crime abroad unless it extradites them to another state or surrenders them to an international criminal tribunal.<sup>99</sup> It must also cooperate and provide mutual legal assistance to other states in connection with criminal proceedings relating to enforced disappearance<sup>100</sup> and with a view to assisting victims of enforced disappearance in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.<sup>101</sup>

The Convention requires Sri Lanka to protect those who make complaints, witnesses, relatives of the disappeared person and persons participating in investigations against ill-treatment or intimidation as a consequence of the complaint or any evidence given.<sup>102</sup> It requires detainees to be protected, including by ensuring that no one is held in secret detention<sup>103</sup> and requires safeguards in national legislation and practice to ensure that deprivation of liberty does not result in enforced disappearance.<sup>104</sup> Sri Lanka's legal system must guarantee victims of enforced disappearance - which includes the disappeared person and any

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<sup>94</sup> Article 24(3) of International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>95</sup> Article 4.

<sup>96</sup> Article 12 and Article 3.

<sup>97</sup> Article 6.

<sup>98</sup> Article 3.

<sup>99</sup> Article 9.

<sup>100</sup> Article 14.

<sup>101</sup> Article 15.

<sup>102</sup> Article 12.

<sup>103</sup> Article 17.

<sup>104</sup> Articles 17, 18, 20, 21, 22, 23.



individual who has suffered harm as the direct result of the enforced disappearance –the right to obtain reparation and prompt, fair and adequate compensation.<sup>105</sup>

When enforced disappearance is committed as part of a widespread or systematic attack on a civilian population it amounts to a crime against humanity.<sup>106</sup>

## COMPLAINTS PROCESS

The Convention establishes an expert Committee on Enforced Disappearance to which Sri Lanka must report in 2018 about the measures it has taken to give effect to its obligations under the Convention. Sri Lanka has also made a declaration under article 32 of the Convention recognizing the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations.

Regrettably, the government has yet to make a declaration under Article 31 recognizing the competence of the Committee to consider communications from or on behalf of individuals claiming to be victims of a violation of the Convention. To ensure that victims have access to the Committee when all effective domestic remedies have been exhausted, a declaration under Article 3, should be made without delay. Without this declaration, the Committee cannot admit any communication concerning a State Party and cannot seek information about the case from the State Party.

## IMPLEMENTATION

On 9 February 2017, a bill was placed before Parliament to implement the International Convention for the Protection of All Persons from Enforced Disappearance, which Sri Lanka ratified on 3 May 2016. The new law, which has been long awaited and has yet to be enacted would criminalize enforced disappearances and “ensure the right to justice and reparation to victims of enforced disappearance.”<sup>107</sup> It would recognize the right of victims and relatives of victims “to know the truth regarding the circumstances of an enforced disappearance, the progress and results of the investigation as are carried out by the law enforcement authorities, and the fate of the disappeared person.”<sup>108</sup>

The law would also guarantee the rights of victims and their families to “form and freely participate in organizations and associations” dedicated to learning the truth about enforced disappearances and assisting victims.<sup>109</sup> The bill requires a simple majority in Parliament to be enacted.<sup>110</sup>

The draft legislation elaborates on the Convention’s definition of enforced disappearance, stating that:

“Any person who, being a public officer or acting in an official capacity, or any person acting with the authorization, support or acquiescence of the State - (a) arrests, detains, wrongfully confines, abducts, kidnaps, or in any other form deprives any other person of such person’s liberty; and (b) (i) refuses to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty; or (ii) conceals the fate of such other person; or (iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person, shall be guilty of the offence of enforced disappearance.”

It provides for a maximum term of imprisonment of twenty years, fines of up to one million rupees and compensation of at least five hundred thousand rupees to a victim of enforced disappearance. In addition, the law would also provide for the jurisdiction of Sri Lankan courts when the enforced disappearance is

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<sup>105</sup> Article 24 of International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>106</sup> See for example: Article 5 International Convention for the Protection of All Persons from Enforced Disappearance; Article 7 of the Rome Statute of the International Criminal Court.

<sup>107</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka, Part II of February 09, 2017.

Supplement, International Convention for The Protection of All Persons from Enforced Disappearance; A Bill to Give Effect to the International Convention for the Protection of all Persons from Enforced Disappearance; To Ensure the Right to Justice and Reparation to Victims of Enforced Disappearance; and to Provide for Matters Connected Therewith or Incidental Thereto.

<sup>108</sup> Section 14(1) Bill to Give Effect to the International Convention for the Protection of all Persons from Enforced Disappearance.

<sup>109</sup> Section 14(2) Bill to Give Effect to the International Convention for the Protection of all Persons from Enforced Disappearance.

<sup>110</sup> Govt. Gazettes Enforced Disappearances Bill, Daily FT 14 February 2017, <http://www.ft.lk/article/597677/Govt--gazettes-Enforced-Disappearances-Bill#sthash.62NVJKVE.dpuf>.

committed outside Sri Lanka by nationals or foreigners who are present in any territory under the jurisdiction of Sri Lanka, therefore enshrining universal jurisdiction to some extent.<sup>111</sup>

Likewise, in accordance with the Convention, Section 6 provides that “every victim and relative of a victim shall have the right to know the truth regarding the circumstances of an enforced disappearance, the progress and results of the investigation as are carried out by the law enforcement authorities, and the fate of the disappeared person”.

The law would prohibit secret detention, and ensure that “any person deprived of liberty shall have the right to communicate with and be visited by his relatives, attorney at-law or any other person of his choice, subject only to the conditions established by written law.” The law would require law enforcement to investigate cases where there are reasonable grounds for believing that a person has been forcibly disappeared even if there has been no formal complaint.

It would also hold responsible a superior who “knows, or consciously disregards” information that subordinates under his or her effective authority and control were committing or about to commit an enforced disappearance; who “fails to take all necessary and reasonable measures to prevent or repress the commission of the offence ... or to submit the matter to a law enforcement authority for investigation and prosecution.”<sup>112</sup>

The need for this law is urgent, particularly as Sri Lanka is poised to implement the Office on Missing Persons, which will inevitably in the course of its inquiries uncover evidence that should be subject to criminal investigation.

## THE OFFICE ON MISSING PERSONS (OMP)

In August 2016, Parliament voted to enact the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Bill (OMP Bill), meant to assist families seeking information about missing persons, including victims of enforced disappearances, those missing in the context of the armed conflict or in connection with political unrest or civil disturbance. The Office would take on the caseload of the Paranagama Commission and would also conduct new investigations.

### LACK OF CONSULTATION

Victims’ families and civil society groups who are active on enforced disappearances expressed concern over a lack of real consultation during the process of developing the bill establishing the Office. They advocated appointment of victim representatives to work with the Office to support public engagement. They also objected to the name of the body, preferring that it refer specifically to enforced disappearances, but were unsuccessful in securing this change.<sup>113</sup>

### FLAWS IN THE OMP

Amnesty International welcomed the positive step by the government to establish the OMP. There are many useful elements of the law including its broad definition of missing persons; broad powers of the Office to conduct its investigations with the cooperation of national authorities; the establishment of a Victims and Witnesses Protection Division; powers to issue certificates of absence to families; detailed provisions on keeping victims and families informed of investigations; the establishment of offences of contempt against the authority of the Office; and a mandate to recommend reparation, including guarantees of non-recurrence

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<sup>111</sup> Section 6(2) (a) - Bill to Give Effect to the International Convention for the Protection of all Persons from Enforced Disappearance.

<sup>112</sup> Section 3, (3) (a) (b) and (c) - Bill to Give Effect to the International Convention for the Protection of all Persons from Enforced Disappearance.

<sup>113</sup> “Resolutions adopted at the National Delegates’ Conference of Affected Families of the Enforced or Involuntary’ Disappeared held at Thulana Auditorium, Kelaniya on the 30th of August, International Day of the Disappeared.” See also, Ruki Fernando, “Sri Lanka’s 65,000 Disappeared: Will the Latest Missing Persons’ Office Bring Answers?” *The Wire*, 14 June 2016, <https://thewire.in/42687/sri-lankas-disappeared-will-the-latest-missing-persons-office-bring-answers/>.

for victims. However, a number of provisions are also cause for concern as they could be interpreted to protect suspects providing information to the Office from future prosecution.<sup>114</sup>

In particular, consistent with Sri Lanka's concurrent obligations to ensure justice, truth and reparation, it is important that when the Office gathers information indicating individual criminal responsibility for crimes under international law (including enforced disappearance, torture, war crimes and crimes against humanity), this information should be forwarded confidentially to the Special Counsel of the proposed justice mechanism for further criminal investigation. While Section 12(i) of the Act provides the Office with discretion to do this, it is not mandatory. In order to meet the Office's objectives to 'protect the rights and interests of missing persons and their relatives' and 'identify proper avenues of redress to which such missing persons or their relatives may have recourse' such information must be shared.

Amnesty International is also concerned that the Act empowers the Office to enter into confidentiality agreements with individuals and organizations and urges the Office to clarify that such agreements will exclude information relating to crimes under international law, which will be shared with criminal investigators. The state should also clarify that no amnesties or immunities may be applied to persons suspected of crimes under international law.<sup>115</sup>

Section 25(2)(c) of the Act states that "no proceedings: civil, or criminal, or administrative shall be instituted against any person consequent to such person in good faith, providing evidence or documentation to the [Office]." Amnesty International reads this section to preclude legal proceedings against persons specifically for the act(s) of providing evidence and documentation to the Office. But it could be argued that the provision also relates to incriminating conduct contained in such evidence or documentation, including for crimes under international law. This should be clarified to ensure that the provision is not used to provide amnesty or use immunity to persons providing evidence and documentation of crimes under international law to the office.

## **STATUS OF THE BILL**

Almost six months later, the President has still not signed the Bill into law. In January 2017, Amnesty International received disturbing reports that Sri Lanka's military was also calling for changes to the legislation but the scope and content of the proposed changes are not known, although in early February, the cabinet announced one amendment restricting the Office from entering into agreements with individuals or organizations to perform its tasks. Amnesty International reiterates its strong concern that no provision of the OMP should deny families the truth about the whereabouts or fate of their loved ones or obstruct their access to justice. All evidence relating to individual criminal responsibility for abuses amounting to serious crimes, including enforced disappearance, torture and other crimes under international law should be submitted to appropriate authorities, including the proposed justice mechanism when it is established, for criminal investigation.

## **DIRECTIVES ON PROTECTION OF PTA DETAINEES (AND "ANY SITUATION OF DECLARED PUBLIC STATE OF EMERGENCY")**

In June 2016, President Sirisena instructed the Sri Lankan police and armed forces to abide by directives issued by the Human Rights Commission of Sri Lanka (HRCSL) on 18 May 2016.<sup>116</sup> These were designed to

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<sup>114</sup> See Amnesty International, "Making the Rights Choices, Establishing Effective Mechanisms to Deliver Justice, Truth and Reparation to Victims", 8 November 2016, Index number: ASA 37/4902/2016, p. 33, <https://www.amnesty.org/en/documents/asa37/4902/2016/en/>.

<sup>115</sup> Section 11(a), Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act.

<sup>116</sup> Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention Under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, <http://hrctl.lk/english/2016/05/27/directives-issued-by-the-human-rights-commission-of-sri-lanka-on-arrest-and-detention-under-the-prevention-of-terrorism-temporary-provisions-act-no-48-of-1979/>.

better protect the human rights of those arrested under the PTA, and to end practices that can lead to abuse, such as the failure of arresting officials to identify themselves, the transport of suspects in unmarked vehicles, and the use of unofficial places of detention.

Similar, though less exhaustive directives were issued by Mahinda Rajapaksa in July 2006 and re-issued in April 2007, but they were not enforced.<sup>117</sup> The new HRCSL directives attempt to reinforce those earlier directives and bring them in line with international standards. They directed police to issue arrest receipts to family members acknowledging arrests and providing the name and rank of the arresting officer, the time and date of arrest, and the place where the person will be detained:

“The receipt shall be attested by the person to whom the receipt is issued, and be counter-signed by the arrestee, whose name, address, identity card no [number] and reason for arrest shall also be stated in the receipt. The receipt shall be issued in the language that the arrested person ordinarily uses.”<sup>118</sup>

Among other safeguards, including special measures designed to prevent gender-based violence and protect children in custody,<sup>119</sup> the directives prohibit torture, require that the arrestee be allowed to meet with his or her lawyer during interrogation, and that arrested persons should be held only at gazetted authorized detention centres. It notes that “the PTA should be construed narrowly and used in very specific circumstances, and should not be used to arrest persons for ordinary crimes.”<sup>120</sup>

The HRCSL requires that police and military personnel be “explicitly informed that anyone who commits human rights violations against any person (including any act of violence such as sexual harassment, sexual abuse and rape) will be promptly brought to justice, and if convicted will face penalties commensurate with the seriousness of the crime in accordance with the law.”<sup>121</sup> It notes that the HRCSL should be permitted unimpeded access to anyone arrested under the PTA and any place of detention or confinement and should be informed of all detentions, releases or transfers within 48 hours.<sup>122</sup>

## REPLACING THE PTA

### FAILURE TO REPEAL

Despite the government’s commitments to the Human Rights Council to review and repeal the Prevention of Terrorism Act in September 2015, the Act remains in force and a proposed policy and legal framework for replacement legislation permits many of the same practices which have contributed to the large-scale commission of enforced disappearances in Sri Lanka. This framework was approved by Sri Lanka’s cabinet in October but has yet to be approved by parliament. The continued reliance on such laws calls into serious question Sri Lanka’s willingness to fulfil its obligations to ensure that no one shall be subjected to enforced disappearance.

Both the PTA and the Counter-Terrorism Bill currently being considered by parliament allow for prolonged administrative detention (detention without charge or trial, usually on security grounds). The invariably fails to meet the safeguards required by international law to prevent arbitrary detention and facilitates enforced

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<sup>117</sup> See Amnesty International, “Locked Away: Sri Lanka’s Security Detainees”, Annex; Presidential Directives On Protecting Fundamental Rights of Persons Arrested and / or Detained, March 2012, Index number: ASA 37/003/2012, p. 48, <https://www.amnesty.org/en/documents/asa37/003/2012/en/>.

<sup>118</sup> Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, 18 May 2016, Part I, page 2, <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>.

<sup>119</sup> Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, 18 May 2016, Part III, page 4, <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>.

<sup>120</sup> Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>.

<sup>121</sup> Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, Part II, point 15, page 4. <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>.

<sup>122</sup> Directives Issued by the Human Rights Commission of Sri Lanka on Arrest and Detention under the Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979, Part IV, page 5. <http://hrctl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf>.

disappearance.<sup>123</sup> The PTA also allows for other detention-related practices that increase the likelihood of abuse, including secret and incommunicado detention and the transport of suspects from place to place for the purpose of investigation, something that is also permitted under Sri Lanka's Criminal Procedure Code.<sup>124</sup> As discussed below, police failing to record arrests or falsifying arrest reports in the course of ordinary policing, and torture and ill-treatment of criminal suspects in custody also increase the potential for enforced disappearances.

## COUNTER-TERRORISM BILL: A “CURE ... FAR WORSE THAN THE DISEASE”?<sup>125</sup>

In October 2016, Sri Lanka's cabinet approved a draft policy and legal framework for a new Counter Terrorism Act (CTA) to replace the PTA. The draft Bill addresses some key concerns regarding the PTA including: stipulating that magistrates shall be empowered to visit “approved” places of detention;<sup>126</sup> requiring that authorities take the best possible endeavours to notify family members of arrests as well as notifying the Human Rights Commission of Sri Lanka; and mandating the creation of a centralized database to register arrest, custody, detention, remand, grant of bail, discharge, prosecution, conviction or acquittal and punishment of persons arrested under the Act. It also restores the burden of proof to the prosecution to demonstrate that confessions have not been extracted through torture when such allegations have been made, and requires medical examinations before and after confessions are recorded for them to be admissible.<sup>127</sup>

However, there are serious human rights concerns regarding the Bill. In particular:

- It provides that the PTA will continue to apply in relation to those already detained under the Act;
- The definition of terrorism-related offences covered by the bill remains so broad that it may be used to target the legitimate activities of human rights defenders, journalists and trade union activists. In particular, it retains the PTA's vague subjectivity around incitement of communal tensions that have in the past been used to arrest human rights defenders who raised concerns about persecution of minorities;<sup>128</sup>
- It continues to provide for administrative detention allowing for someone to be held in remand custody for up to 1 year unless criminal proceedings were instituted against them. This could be extended by another 1-year period on an order by a High Court judge. It also provides for 30-day detention orders, renewable for up to 180 days;
- It recognizes the right of detainees to legal counsel but only after police recorded the detainees' initial statement, when many allegations of ill-treatment occur.

As a result of these and other legitimate human rights concerns, Sri Lankan lawyers and activists have demanded the withdrawal of the Bill.<sup>129</sup> In January, the government stated that the draft had been revised, but the changes have not been made public. An article in the Sri Lankan media citing anonymous official sources describes some of these reported changes, which may address some but not all of these concerns.

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<sup>123</sup> See Amnesty International, “14-Point Program for the Prevention of “Disappearances””, reproduced in Amnesty International, ““Disappearances” and Political Killings: Human Rights Crises of the 1990s – A Manual for Action”, February 1994, Index number: ACT 33/001/1994, <https://www.amnesty.org/en/documents/act33/001/1994/en/>.

<sup>124</sup> Section 115(4) of the Sri Lankan Code of Criminal Procedure.

<sup>125</sup> Kishali Pinto-Jayawardena, “Is this counter-terrorism in a far deadlier garb?”, *Sunday Times*, 16 October 2016, <http://www.sundaytimes.lk/161016/columns/is-this-counter-terrorism-in-a-far-deadlier-garb-212670.html>.

<sup>126</sup> Policy and legal framework of the proposed Counter Terrorism Act of Sri Lanka, section xxxv, p.20.

<sup>127</sup> Policy and legal framework of the proposed Counter Terrorism Act of Sri Lanka, Section IX, Evidence – Admissibility, section iii, p.44.

<sup>128</sup> Policy and legal framework of the proposed Counter Terrorism Act of Sri Lanka, Section xxvii, p. 7 states.

<sup>129</sup> Kishali-Pinto Jayawardena, “Is this counter-terrorism in a far deadlier garb?” *Sunday Times*, 16 October 2016, <http://www.sundaytimes.lk/161016/columns/is-this-counter-terrorism-in-a-far-deadlier-garb-212670.html>. See also The Hindu, “Draft of new counter-terror law triggers old fears in Sri Lanka”, 27 October 2016 - Updated 02 December 2016, <http://www.thehindu.com/news/international/Draft-of-new-counter-terror-law-triggers-old-fears-in-Sri-Lanka/article16082401.ece>; Sri Lanka: “Sri Lanka Guardian, “Counter Terrorism Act ‘more terrifying’ than PTA”, 17 October 2016, <http://www.sguardian.org/2016/10/sri-lanka-counter-terrorism-act-more-terrifying-than-pta/>.

# THE CONSULTATION TASK FORCE (CTF)

**“Disappearances constituted the most recurrent and pressing issue brought before the CTF. As affected families ...told their stories, they opened files with documents, photographs, letters to agencies, newspaper clippings, shards of evidence they had pieced together over months and years, sometimes even decades. Many recounted their exhausting and unsuccessful search for the missing ... risking intimidation, detention, and interrogation. Some were fearful ...[o]thers openly named abductors. Many described how [disappearances] had impacted families...depleted household economies and spread suspicion and division within communities.**

**An overwhelming number of participants were women, revealing that women from all parts of the island ...have disproportionately borne the burden of searching for the disappeared. ...CTF heard an unequivocal call across the country to end the practice of disappearances, to investigate and provide answers to the thousands of cases of the disappeared. Several explicitly stated they wanted no one to suffer what they had endured.” - Final Report of the Consultation Task Force on Reconciliation Mechanisms, 17th November 2016, Page 176.**

A key commitment of Human Rights Council Resolution 30/1, which Sri Lanka co-sponsored in October 2015, was to “safeguard the credibility of the processes of truth-seeking, justice, reparations and guarantees of non-recurrence by engaging in broad national consultations...” Prime Minister Ranil Wickremasinghe appointed the CTF in January 2016 to conduct public consultations on the design of mechanisms to advance truth, justice reparation and non-recurrence in Sri Lanka: an office on missing persons; an office for reparations; a judicial mechanism with a special counsel, and a truth, justice, reconciliation and non-recurrence commission.

These were undertaken by local teams with knowledge of the communities in question. But they lacked sufficient financial and logistical support, and the visible and whole-hearted support of the government that gave them the consultation mandate in the first place. The process, while rigorous, took far longer than anticipated. Despite these obstacles, the result was an impressive effort to reflect public views in policy decision-making. The CTF received a total of 7,306 submissions of which nearly 5,000 were made at public meetings throughout the island.

In the north and east of Sri Lanka, the CTF reported that “the overwhelming majority” of participants were families of the disappeared. In the South too, they formed “a fair proportion” of those who made submissions.<sup>130</sup> Focus group discussions and written submissions accounted for more than 2,400 additional submissions; families of the disappeared were also represented in these discussions. The massive Commission report (over 700 pages in two volumes) released on 3 January 2017 summarizes these testimonies and the CTF’s findings and recommendations derived from this public input – much of it reflecting the often wrenching experiences of families who have been seeking truth and justice for the deaths, disappearances and injuries of loved ones over many years.

This was the second public report of the CTF. In August 2016, the Task Force released an interim report: “The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered,” after government authorities circumvented the consultation process to introduce a Draft Bill to establish the Office on Missing Persons (OMP). In its final report, the CTF emphasizes that the Bill passed in Parliament contained none of the amendments recommended during public consultations.

It noted that “The key demands,” ignored by the drafters of legislation:

**“...were with regard to highlighting the enforced and involuntary nature of disappearance in the title of the office, limiting the discretion of the OMP over sharing of information with prosecutorial authorities, accessibility of the offices, language, representation, involvement of families of the disappeared in the OMP and protection of those affected. For some family members of the disappeared, discussions on justice and reparations were considered too**

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<sup>130</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, 17th November 2016, page 3, para 3.4.

**premature or even dangerous. The urgent task, as they saw it, was to immediately ascertain whether disappeared persons from both the war and the Southern insurrection were still in detention, either in Sri Lanka or abroad.”<sup>131</sup>**

Amnesty International agrees with the conclusion of the CTF that public consultation must be embraced as a regular component of policymaking going forward.<sup>132</sup> This will help ensure transparency and accountability, and promote dignity and protection – all essential building blocks of a healthy society. Amnesty International also supports the CTF’s call for the Sri Lankan government to initiate a national outreach program and chart a roadmap for the establishment and efficient functioning of the proposed mechanisms.<sup>133</sup> One of the key ways forward, as suggested by the CTF, should be the establishment of an overall monitoring body for all mechanisms which should include representatives from affected families, human rights and civil society groups, and the international community.

## **KEY FINDINGS IN RELATION TO DISAPPEARANCES**

The CTF drew a critical finding from the consultations: every community in Sri Lanka has experienced disappearances. Disappearances “cut across ethnic, religious and class differences.” They were reported everywhere the CTF held hearings; and were “carried out across time and geographic regions, by both State and non-State actors.”<sup>134</sup>

Sri Lanka must act decisively to end its culture of impunity. The CTF has called for the rights to truth, justice and accountability, reparation and guarantees of non-recurrence to be enshrined in the new constitution, which is due to be debated in Parliament early in 2017.<sup>135</sup> It has also called for legal recognition that the right to an effective remedy that includes accountability “of those who gave orders” including through a criminal justice process; and “adequate, effective and prompt reparation and rehabilitation.”<sup>136</sup> It calls for international crimes such as war crimes and crimes against humanity to be criminalised and incorporated into Sri Lankan law, “without temporal prescriptions and in a manner that allows for the prosecution of these crimes committed in the past,” and for legislation making enforced disappearance a crime under Sri Lankan law.<sup>137</sup> It opposes amnesties for war crimes and crimes against humanity, as well as gross human rights abuses including torture, enforced disappearance and rape.<sup>138</sup>

The report notes that the Government of Sri Lanka committed to international participation in the proposed mechanisms when it co-sponsored Resolution 30/1. Amnesty International supports the CTF’s recommendation for a hybrid Court as well as international participation in the Office of the Special Counsel of prosecutors and investigators and the provision of international technical assistance.<sup>139</sup>

An international role is crucial to ensuring effectiveness and independence of these bodies, but there should be clear and public guidelines for international participation, which should be phased out when sufficient expertise, capacity and public trust has been established in Sri Lanka.

Sri Lanka’s massive backlog of unresolved disappearance cases and decades of impunity is daunting. The CTF has called for the Office of the Special Counsel to be established immediately and emphasizes that regardless of practical obstacles, “at a minimum,” and as a matter of policy persons “bearing the greatest responsibility for international crimes” must be held accountable. It emphasises the need for judicial reforms to enable prosecutions, “given the large volume of disappearances, current delays and other obstructions in progressing with cases,” and advocates establishment of a special bench of the relevant court to hear cases of disappearances.”<sup>140</sup>

The CTF report identifies a number of initiatives to improve the safety, accountability and effectiveness of and public trust in state bodies which could help end impunity and improve access to truth and justice for

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<sup>131</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, 17th November 2016, page XIII.

<sup>132</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 428 and 434.

<sup>133</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 428.

<sup>134</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 177.

<sup>135</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page IX.

<sup>136</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 427.

<sup>137</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 428.

<sup>138</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Pages XVI and Page 44.

<sup>139</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page XVIII.

<sup>140</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 439.

families of the disappeared and other victims of human rights violations. It prioritises improved bi-lingual language proficiency in state institutions; more transparency of law making processes and police and judicial reform.<sup>141</sup> Other high priority issues identified that are especially relevant to the effort to address disappearances include publishing a list of all detainees and detention centres, repealing of the PTA and releasing all detainees held under the PTA without charge.<sup>142</sup> The CTF also calls on the authorities to ensure that members of the police, security forces and intelligence agencies abide by Presidential Directives issued in June 2016 aimed at protecting the rights of detainees.<sup>143</sup> As noted in the CTF's report, the continued lack of effective witness protection contributes to impunity and threatens to the safety and security of victims and witnesses, including families of the disappeared.<sup>144</sup>

The CTF emphasizes the need for restorative psychosocial support and assistance to be incorporated in the design and implementation of all proposed mechanisms.<sup>145</sup> It also provides a wide range of recommendations on reparations, including advocating assistance to vulnerable family members of the disappeared and state recognition of the right of families to mourn and commemorate the death and disappearance of loved ones.<sup>146</sup>

But as the CTF concludes based on the submissions it received:

**“At the heart of all calls for reparations is a call for justice, a feeling that wrongs that have been committed against individuals or communities need to be corrected, through redress, repair and restitution. As such, the purpose of reparations was articulated in terms of the accountability of the State for wrongs it had done to citizens and/or the recognition and acknowledgement of their suffering. Further, there was a clear articulation of justice as a form of reparation, or in some instances as the only form of reparation requested.”<sup>147</sup>**

## **FAILURE OF AUTHORITIES TO ACKNOWLEDGE AND PRIORITIZE CONSIDERATION OF ITS RECOMMENDATIONS**

Disappointingly, when the CTF published its report on 3 January, the President and Prime Minister failed to attend the official handover. The Minister of Justice expressed “no confidence” in its findings.<sup>148</sup> A follow-up meeting between the Task Force and President Sirisena at the end of January did little to allay fears that the report's findings would not be taken seriously, particularly as he reportedly made clear that his priority was constitutional reform.

In co-sponsoring Resolution 30/1, the Sri Lankan government made commitments to the people of Sri Lanka and to the international community of which it is a part to recognize and honour the central role of victims and their experiences in developing credible truth-seeking, justice and reparation processes, and devising appropriate and effective reforms aimed at non-recurrence. It ordered broad national consultations and appointed the individuals tasked with carrying them out. It must not now back away from CTF's findings because they are not what leaders wanted or expected. If Sri Lanka's commitment to accountability is to be credible, the government must formally acknowledge and prioritize the Task Force findings and recommendations and clarify its implementation plan.

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<sup>141</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 428.

<sup>142</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 428.

<sup>143</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 428.

<sup>144</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 28.

<sup>145</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Pages XI and 429.

<sup>146</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 440.

<sup>147</sup> Final Report of the Consultation Task Force on Reconciliation Mechanisms, Page 13.

<sup>148</sup> Daily Mirror, “I have no confidence in the CTF: Wijeyadasa”, 6 January 2017, <http://www.dailymirror.lk/article/i-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html>.



# 6. CONCLUSION AND RECOMMENDATIONS

Whether Sri Lanka can deliver on the demands of families of the disappeared for truth, justice, reparation and guarantees of non-recurrence is the acid test for broader efforts to address impunity in Sri Lanka. Enforced disappearance has touched every community and there has been virtually no accountability for these grievous crimes.

Like the women featured in this briefing, families of the disappeared know what they want and what they need. It is up to Sri Lanka's decision-makers to hear their demands and to implement them. There may be people in positions of power and authority who do not understand the need to account. There will be opposition to revealing the truth about past violations and abuse. But if Sri Lanka is to succeed in pulling away from its violent past, policymakers must put victims' demands for genuine and effective measures to deliver justice, truth, reparation and guarantees of non-recurrence at the centre of the process.

It will be a long, difficult road, and traversing it will require great courage. But it is not a road Sri Lanka must travel alone. Amnesty International urges Sri Lanka to seek and accept international assistance where it is needed to ensure the most effective and rigorous process possible, so that all Sri Lankans can finally learn the truth.

**Amnesty International urges the Sri Lankan authorities to keep victims at the centre of efforts to ensure justice, truth, reparation and guarantees of non-recurrence and makes the following recommendations to better address the needs of families of the disappeared:**

## **GENERAL**

- Implement the International Convention for the Protection of All Persons from Enforced Disappearance effectively into national law in accordance with Amnesty International's *No Impunity for Enforced Disappearance: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*.<sup>149</sup>
- Formally acknowledge and prioritize consideration of the findings and recommendations of the Consultation Task Force recognizing the overwhelming demand of victims for truth and justice and providing for interim measures for individuals in need of urgent relief while a full reparation program is being designed.
- Provide effective protection to persons who file complaints of enforced disappearance before the courts and the proposed mechanism, as well as to families of the disappeared person, witnesses and lawyers representing them.

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<sup>149</sup> IOR 51/006/2011, available at: [www.amnesty.org/en/documents/IO51/006/2011](http://www.amnesty.org/en/documents/IO51/006/2011)

- Where expertise and resources do not exist in Sri Lanka to fulfil these commitments, international expertise and technical support should be sought.

## **TRUTH**

- The President should enact the OMP Act without further delay affirming that the mandate of the Office is to establish the truth regarding the disappeared and to contribute to efforts by other mechanisms to ensure justice and reparation for victims and their families.
- Establish the Office on Missing Persons as soon as possible and ensure its effectiveness by:
  - appointing highly qualified members representing the pluralistic nature of Sri Lankan society and a fair balance of female and male members in a transparent process;
  - ensuring security of tenure of its members so that they can perform their responsibilities without hindrance or political interference;
  - providing it with sufficient resources and cooperation to undertake effective national outreach in all three official languages and through a range of accessible media to inform all victims and their families of the work of the Office on Missing Persons and how to engage with it;
  - providing it with sufficient resources and cooperation by Sri Lankan authorities to promptly, thoroughly, independently and impartially investigate all disappearances in accordance with international standards for investigations, to establish the whereabouts of and fate of disappeared persons. This includes providing for the establishment of a dedicated forensics unit or team within the Office on Missing Persons composed of highly qualified experts in forensics and related fields.
- Implement the commitment when establishing the Office on Missing Persons to collate data related to enforced disappearances, including from previous inquiries and establish a centralized database.
- Fully investigate and disclose information about the use of secret detention; publicly acknowledge and identify all places that have been used for secret detention, those responsible for these facilities and all detainees who have been held within.
- Ensure that when the proposed Commission of Truth, Justice, Reconciliation and Non-recurrence is established that the OMP and the Commission coordinate their efforts to establish the truth regarding disappearances and share information.

## **JUSTICE**

- Support the role of the OMP in submitting all relevant information on enforced disappearances to prosecuting authorities (including the Special Counsel) to ensure that those suspected of responsibility are brought to justice.
- Enact legislation making enforced disappearance and disappearances by non-state actors crimes in Sri Lankan law, in accordance Articles 2 and 3 of the International Convention for the Protection of All Persons from Enforced Disappearance and the recommendations of Amnesty International's Checklist.
- Ensure that prompt, thorough, independent and impartial criminal investigations are conducted into alleged disappearances and other human rights abuses and violations of international humanitarian law that amount to crimes under national or international law.
- Preclude the application of amnesties, immunities and other measures of impunity to persons suspected of committing crimes under international law.
- Ensure that state agencies accused of involvement in alleged violations are not be tasked with investigating their own personnel or their affiliates.
- Establish the 'Special Counsel' (which Amnesty International understands to mean a special prosecutor), to investigate allegations of violations and abuses of human rights and violations of

international humanitarian law as soon as possible ensuring that it is independent of the Attorney General's Office and the police, and provided with sufficient staff and resources, as well as the necessary powers, to conduct their work independently and effectively. As far as possible, investigation and prosecution strategies should be transparent.

- Where sufficient admissible evidence exists, prosecute those suspected of criminal responsibility for enforced disappearance and disappearances (perpetrated by non-state actors) promptly before civilian courts in fair trials without recourse to the death penalty.
- Cooperate fully with states exercising universal jurisdiction over enforced disappearance, including by providing mutual legal assistance and extraditing suspects.

## **REPARATION**

- Ensure that victims of enforced disappearance, including their families, are provided with full and effective reparation to address the harm they have suffered, including restitution, compensation, rehabilitation and satisfaction.
- Facilitate the recovery and return of human remains of deceased victims to family members, allow for the performance of funeral and cultural rites for the dead and support and facilitate other forms of memorialization as identified by victims.
- Release all individuals held in administrative detention under the Prevention of Terrorism Act or secret detention unless they are charged with recognizable criminal offences and remanded in custody by an independent, regularly constituted court.

## **GUARANTEES OF NON-RECURRENCE**

- Implement all court rulings (such as Supreme Court decisions in fundamental rights cases and writs of habeas corpus) ordering release of detainees without delay.
- Repeal the Prevention of Terrorism Act (PTA) and end its use immediately; abolish Sri Lanka's system of administrative detention and ensure that any future legislation meant to replace the PTA does not provide for administrative detention and otherwise meets international standards.
- Make a declaration under Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance recognizing the competence of the Committee on Enforced Disappearances to consider complaints from or on behalf of individuals claiming to be victims of a violation of the Convention.

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# “ONLY JUSTICE CAN HEAL OUR WOUNDS”

## LISTENING TO THE DEMANDS OF FAMILIES OF THE DISAPPEARED IN SRI LANKA

In Sri Lanka, Enforced Disappearance has touched every community – spanning time, geography, ethnicity, religion, and class. There has been virtually no accountability for these grievous crimes.

Despite daunting obstacles, family members of the disappeared have persisted in their efforts to seek remedies for the harms they have endured. They have testified before Sri Lankan commissions of inquiry; they have filed habeas corpus petitions in court; they have participated in protests; formed alliances with other victims; written letters to officials; submitted cases to the UN Special Procedures; and reached out to the media. Some have even travelled to Geneva to make their case at the UN Human Rights Council. This briefing highlights the experiences of family members of the disappeared who have pressed publicly for accountability.

The briefing also examines the progress made by the Sri Lankan authorities, as well as highlighting the continuing obstacles to ensuring truth, justice and reparation for crimes committed. Amnesty International urges the Sri Lankan authorities to keep victims at the centre of efforts to ensure justice, truth, reparation and guarantees of non-recurrence and puts forward recommendations to better address the needs of families of the disappeared.