

DISAPPEARANCES IN SRI LANKA: A CONTINUING CRIME

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**SRI
LANKA
CAMPAIGN**
FOR PEACE & JUSTICE

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‘An Island Broken by Impunity’

The Government of Sri Lanka has an obligation, both according to international treaties and the Sri Lankan Constitution, to respect, promote, and protect human rights in the country. Unfortunately, successive governments have fallen far short of meeting that obligation. In Sri Lanka, a climate of impunity for perpetrators has meant that human rights are not properly protected, and that there has not been accountability for past or ongoing violations.

This culture of impunity and lack of accountability has been particularly disastrous for the family members of the forcibly disappeared. The government has continually spoken of its commitment to justice of these disappearances and has created bodies like the Office of Missing Persons to deal with cases, but when no progress has been made, all these promises seem like empty words to the mothers and fathers who still do not know what has happened to their children.

This lack of accountability has not only allowed past abuses to go unpunished but has led to continuous cycles of human rights violations in the country. Achieving truth and justice for the families of the disappeared is a necessary step in creating a more human rights-friendly Sri Lanka. This report contains quotes from select interviews conducted with victims, family members, and human rights activists, by an experienced human rights researcher. Interviewees were informed of, and consented to, the use of the information we have reproduced in this report. However, where appropriate, their names have not been included, to protect their identities. The Sri Lanka Campaign would like to thank all those interviewed for their bravery.

*“Sri Lanka is an island **broken by impunity**. We’re facing a serious human rights crisis again. The government is cracking down on protests; journalists are detained and questioned and still so many **families are waiting for the truth** about their missing loved ones.”*

Sri Lankan Human Rights activist, October 2021. Name redacted for protection.

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Sri Lanka and the ICCPR

Falling short on human rights protections

Sri Lanka has ratified most international human rights treaties and has an obligation to respect and protect human rights. The Sri Lankan Constitution guarantees the protection of fundamental freedoms and rights including equal treatment before the law.¹

However, the Sri Lankan government has displayed utter contempt for these obligations. This can be particularly seen in the country's failure to implement key aspects of the International Covenant on Civil and Political Rights (ICCPR), of which we have highlighted four. These include the National Human Rights Framework (Articles 2.3, 14.1); Impunity (Arts. 2.3, 6]; Freedom of Expression and Assembly (Arts. 19, 21,22) and Counter-Terrorism Measures (Arts. 9 & 14).²

The International Covenant on Civil and Political Rights (ICCPR)

The Covenant is one of the most important international human rights treaties, offering protection for various civil and political rights. Sri Lanka acceded to the ICCPR in June 1980.³

Part Four of the Covenant requires all States to report regularly to the Human Rights Committee, which monitors the implementation of the Covenant's provisions. State parties are periodically reviewed by the Committee in Geneva. Sri Lanka's last review took place in October 2014.⁴ At the end of the review the Committee raised principal matters of concern and made recommendations.

Although the last Sri Lankan review took place more than 7 years ago, there has been almost no effort to resolve many of the areas of concerns raised by the Committee. These include Sri Lanka's use of the Prevention of Terrorism Act, the country's lack of independent investigations, and the need to prosecute perpetrators of enforced disappearances.

¹ <https://www.parliament.lk/files/pdf/constitution.pdf>

² <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³ <https://citizenslanka.org/wp-content/uploads/2015/12/International-Covenant-on-Civil-Political-Rights-ICCPR-Act-No-56-of-2007E.pdf>

⁴

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLKA%2fCO%2f5&Lang=en

Sri Lanka and the Human Rights Council

*“The families of the disappeared have a right to **truth, justice, reparation and guarantees of non-recurrence** and the High Commissioner urges the Government to acknowledge their sufferings, urgently **determine the fate or whereabouts of victims**, provide reparations, and **bring perpetrators to justice.**”*

Report of the UN Office of the High Commissioner for Human Rights, February 2022. ⁵

Pulling out of key resolutions

In September 2015, a report by the UN’s Office of the High Commissioner for Human Rights Investigation on Sri Lanka (OISL) was published, which documented serious allegations regarding the abuse and violation of human rights during the Sri Lankan armed conflict, and the total failure of the Sri Lankan government to hold individuals and institutions to account for those violations.⁶ A few weeks later, at the Human Rights Council in Geneva, the government of President Maithripala Sirisena co-sponsored UN Human Rights Council resolution 30/1, and made various commitments aimed at promoting reconciliation, accountability, and human rights in Sri Lanka.⁷ In 2017 and 2019, Sri Lanka co-sponsored additional resolutions, renewing those commitments.⁸

Whilst actual progress remained slow, as Sirisena’s government failed to implement many of the commitments made at the Council, the change of government in November 2019 has led to a definitive reversal of progress on accountability. The new government withdrew from co-sponsorship of the resolution, and co-operation with international bodies such as the Special Procedures was side-lined.⁹ Promises of new domestic Commissions of Inquiry to deal with crimes has been met with despair by victims given Sri Lanka’s long history of failed Commissions. In January 2021, the High Commissioner for Human Rights issued a damning report on Sri Lanka highlighting domestic failures to deal with accountability.¹⁰

The Human Rights Council adopted Resolution 46/1 on 23 March 2021, despite the Sri Lankan Government’s refusal to engage with this resolution.¹¹ It established an important new accountability mechanism, which allows the OHCHR to collect, analyse, and preserve evidence of international crimes committed in Sri Lanka for use in future prosecutions.

⁵ <https://www.ohchr.org/en/documents/reports/ahrc499-promoting-reconciliation-accountability-and-human-rights-sri-lanka-report>

⁶ <https://www.refworld.org/docid/55ffb1d04.html>

⁷ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/1

⁸ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/L.1, and

https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/40/1

⁹ <https://www.srilankacampaign.org/time-for-international-action/>

¹⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E>

¹¹

<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F46%2F1&Language=E&DeviceType=Desktop&LangRequested=False>

Impunity casts a shadow over human rights hopes (Arts. 2.3, 6)



*“Impunity in Sri Lanka simply means **lack of political will** to investigate grave crimes and hold anyone responsible”*

Sri Lankan activist, September 2021

Victims’ Rights

States have a general and binding legal obligation to that ensure everyone has the right to effective remedy, should their rights under the ICCPR be violated, including by a state party, according to Article 2 of the Covenant.

In 2014, the ICCPR Committee concluded that Sri Lankan authorities had failed to address impunity for government forces, affiliated paramilitaries, and non-state actors like the LTTE, for international crimes committed during and after the armed conflict in Sri Lanka.¹² Victims of human rights abuses continue to be denied prompt and effective remedies, and the state has totally failed to ensure independent and impartial investigations into emblematic cases.

¹²

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLKA%2fCO%2f5&Lang=en

Emblematic Case #1: The ‘Trinco 5’



In the so-called ‘**Trinco 5**’ case, it is alleged that five students were extra-judicially executed by members of the Special Task Force – an elite police commando unit – in Trincomalee in 2006. Fifteen years later, no-one has been held responsible for these killings. Twelve Special Task Force officers were arrested in June 2013 in connection with a non-summary inquiry into the killings but were released in October that same year. In 2019, these 12 Special Task Force officers were acquitted, and there still has not been any justice for the murdered students.¹³

Dr. Manoharan, the father of Ragihar, one of the victims in the attack, has long been fighting for justice for his son, and had to leave Sri Lanka due to the threats that were made against him. He believes that the inquiry primarily failed as it did not address allegations against the commanding officer, Kapila H.D.K.S Jeyesekera.

“Several witnesses named Jayasekera but see what happened to him – he was just transferred. This is what Sri Lanka does with perpetrators, it promotes them. I don’t have any faith in Sri Lanka’s justice system - the government just wants to protect the military. There has been no real independent investigation into the ‘Trinco 5’ case and the case is just dragging with no light at the end of the tunnel. For victims’ families like mine our only hope is that the international community will keep pushing for justice”.

Dr. Mahoharan, Phone interview, September 2021.

Impunity for Enforced Disappearances

“Despite the scale and magnitude of enforced disappearances in Sri Lanka, the authorities have failed to make progress in investigating these cases, identifying the whereabouts or fate of the victims, and holding perpetrators accountable.”

Special Procedures, Joint Statement on Sri Lanka, March 2021¹⁴

From the leftist JVP uprising and government counterinsurgency in the late 1980s, to the conflict between the LTTE and the military between 1983-2009, Sri Lankans have been subject to enforced disappearances for decades. According to the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), Sri Lanka is second in the world for reported disappearances.¹⁵ Between 60,000 and 100,000 people are estimated to have been disappeared since the 1980s.¹⁶

At the end of the war in 2009, a significant number of Tamils exiting the No Fire Zone in Mullivaikkal surrendered to security forces. Many have not been seen since. Others were disappeared earlier in the war, or after it had ended. Every day since early 2017, mothers across the North and East have taken to the streets to find out what happened to their children.¹⁷

Despite adversity, families have persisted in trying to access justice. They have filed police complaints; submitted cases to the National Human Rights Commission; written letters to members of Parliament; and testified before numerous Commissions, such as the Lessons Learned and Reconciliation Commission. Frustrated with lack of domestic will to deliver truth, they have taken their calls for truth and justice across Sri Lanka, and even to the Human Rights Council in Geneva. In response, the government established the Office of Missing Persons (OMP) and published a list of names of the disappeared. However, to date, **the OMP has not held a single inquiry into enforced disappearances, and not a single case has been fully investigated to reveal the truth.**

In January 2021, President Rajapaksa appointed retired Supreme Court judge Upali Abeyratne as Chairperson of the OMP. Abeyratne had previously served as president of the controversial Presidential Commission of Inquiry into ‘political victimisation’ and had been accused of contempt of court over his intervention into the case of disappeared cartoonist Prageeth Ekneligoda.¹⁸ Whilst Abeyratne has since been replaced, the President also appointed retired Inspector-General of Police Jayantha Wickramaratne to the OMP in June 2021. Wickramaratne was in charge of police units identified by the UN as being involved in mass disappearances at the end of the war in 2009 and has also been accused of destroying evidence related to the murder of journalist Lasantha

¹³ <https://www.srilankacampaign.org/an-emblematic-failure-in-an-emblematic-case/>

¹⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26725&LangID=E>

¹⁵ <https://reliefweb.int/report/sri-lanka/report-working-group-enforced-or-involuntary-disappearances-its-mission-sri-lanka>

¹⁶ <https://www.amnesty.org/en/documents/asa37/5853/2017/en/>

¹⁷ <https://www.tamilguardian.com/content/families-disappeared-mark-1580-days-protest-mullaitivu-amidst-surveillance>

¹⁸ <https://www.themorning.lk/omp-chief-upali-abeyratne-accused-of-contempt-of-court/>

Wickrematunge.¹⁹ **These appointments to the OMP clearly demonstrate the contempt shown for the families of the disappeared by the present government of Sri Lanka.**

Emblematic Case #2: Prageeth Ekneligoda



On 24 January 2010, journalist and cartoonist Prageeth Ekneligoda disappeared in Homagama, near Colombo, shortly after finishing work at the offices of Lanka-e-News. He has not been seen since. Prageeth, who had been critical of then-president Mahinda Rajapaksa, had previously been abducted in a white van in 2009, before being released the following day; local residents reported seeing a white van without number plates around the time of his disappearance in 2010.²⁰

His wife Sandya Ekneligoda has long been campaigning for the truth about what happened, but little progress was made in the case until the change of government in 2015. In August that year, army personnel were finally arrested by police in relation to Prageeth's disappearance, and in 2019, the Attorney General filed indictments against nine individuals.²¹

Unfortunately, initial excitement with progress in the investigations was dashed with the return to power of the Rajapaksa ruling family, under whose regime Prageeth's disappearance occurred. A senior investigator was forced into exile due to threats, and the officer overseeing the investigations was arrested and detained.²²

According to Sandya Ekneligoda, who has now attended court over 200 times, many recent hearings are simply delayed and postponed.²³ The limited progress that has been made in this case has been largely due to the tenacity of the family in pursuing justice despite threats and intimidation, including by the Presidential Commission of Inquiry into 'political victimisation.' Sandya Ekneligoda has stated that the Commission had intimidated and threatened witnesses in her husband's case.²⁴

In June 2022, the nine military personnel who had been out on bail were remanded once more and summoned before a Colombo court.²⁵ There is now some small hope that there will finally be justice in this case; however, earlier this year, Sandya Ekneligoda had declared that she has no faith in the authorities or judiciary.²⁶

¹⁹ <https://www.ft.lk/news/Appointment-of-former-IGP-to-Office-of-Missing-Persons-sparks-alarm/56-718759>

²⁰ <https://www.amnestyusa.org/pdfs/srilanka11.pdf>

²¹ https://www.dailymirror.lk/breaking_news/Prageeth-Ekneligoda-case-Nine-army-officials-indicted/108-178597

²² <https://www.tamilguardian.com/content/media-under-fire> , and

<https://www.aljazeera.com/news/2021/6/25/truth-will-prevail-sri-lankan-criminal-investigator-after-bail>

²³ <https://srilankabrief.org/sandya-ekneligodas-decade-long-fight-for-justice-ekneligoda-forum-and-web-site-launched-in-colombo/> , and

<https://www.srilankacampaign.org/continuing-crimes-of-disappearances-in-sri-lanka/>
²⁴ <https://srilankabrief.org/the-appointment-of-justice-upali-abeyrathne-as-head-of-the-omp-is-a-direct-insult-and-an-act-of-violence-against-families-of-the-disappeared-sandya-ekneligoda/>

²⁵ <https://www.newsfirst.lk/2022/06/03/prageeth-ekneligoda-nine-military-intelligence-personnel-who-were-out-on-bail-remanded/>

Since 1990, the Sri Lankan government has established several Commissions of Inquiry to investigate enforced disappearances. Although these Commissions received approximately 80,000 complaints, the Sri Lankan authorities have totally failed to undertake criminal investigations.²⁷ In January 2021, a new Commission of Inquiry was established to review the findings of these earlier commissions; although it has presented two interim reports to President Rajapaksa, the Commission has offered no concrete proposals for achieving accountability.²⁸ To date, many alleged perpetrators of enforced disappearances and other human rights violations are promoted, not prosecuted, by the Sri Lankan state.

Emblematic Case #3: The 'Navy 11'



Between August 2008 and February 2009, 11 men and boys were forcibly disappeared, after allegedly being abducted from Colombo for ransom and killed by the Sri Lankan Navy. According to the police investigation and court documents, it is alleged that the victims were transferred from Colombo to the Trincomalee Naval Base in March, and killed in May 2009. The men and boys were aged between 17 and 50.²⁹

Since May 2009, there has been no justice for the families of those who were disappeared. In February 2019, retired Admiral Wasantha Karannagoda, who had previously served as Commander of the Sri Lankan Navy and Ambassador to Japan, was named as the 14th suspect in the case.³⁰ However, following a trial beset by threats and political interference, the Attorney-General announced that charges against Karannagoda would be dropped in October 2021.³¹

Since that decision, Karannagoda was been made Governor of North-Western Province by President Gotabaya Rajapaksa, and in May 2022, he was appointed to a committee to investigate violence during the anti-government protests of April and May.³²

“Wasantha Karannagoda knows everything. How can they (be) releasing him from the case? It is not fair.”

Sarojini Naganathan, mother of 21-year-old victim Rajiv³³

²⁶ <https://colombogazette.com/2022/01/25/eknaligodas-wife-shaves-head-and-seeks-divine-intervention/>

²⁷ <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3718902015ENGLISH.pdf>

²⁸ <https://www.hrw.org/news/2022/06/01/human-rights-watch-submission-un-human-rights-committee-advance-its-review-sri>

²⁹ https://itjpsl.com/assets/press/ITJP_navy_reportFinal-SINGLES.pdf

³⁰ http://www.colombopage.com/archive_19A/Feb23_1550939215CH.php

³¹ https://itjpsl.com/assets/press/ITJP_navy_reportfinal-2-SINGLES.pdf

³² <https://www.newsfirst.lk/2021/12/09/admiral-of-the-fleet-wasantha-karannagoda-new-north-west-governor/>, and <https://www.newsfirst.lk/2022/05/26/former-military-chiefs-to-probe-recent-violence/>

³³ <https://groundviews.org/2021/11/04/pursuing-justice-and-accountability-for-the-navy-11/>

Continuing Crimes

The failure to adequately investigate enforced disappearances and the ongoing suffering of families amounts to a continuing crime. The fact that the Sri Lankan state has still not released information about the individuals' fate or whereabouts means that families continue to suffer turmoil and trauma, as not one has learned the true fate of their loved one.

Emblematic Case #4: Kugan and Lalith

Lalith Kumara Weeraraj and Kugan Muruganandan were abducted by a white van in Jaffna on 9 December 2011. They were preparing a press conference to be held the following day, World Human Rights Day, which aimed to publicise a protest planned the 10th. The protest would include family members of those disappeared since the end of armed conflict, and would call for the release of Tamil detainees held without charge.³⁴ The men left home on Kugan's motorcycle in the afternoon, never to return.³⁵ Four days later, that motorcycle was found parked in the compound of a local police station, but the police denied holding the men, and claimed the vehicle had been found near a Hindu temple on 13 December.³⁶

Lalith's father Arumugan Weeraraj claims that, in the month leading up to his disappearance, Lalith received 'disturbing calls' telling him not to get involved in Jaffna politics.³⁷ In December, after his disappearance, Arumugan received another anonymous call, this time telling him that his son had been killed.

Kugan's wife Janatha claimed that in March 2012, uniformed men arrived at her house, intimidated her, and attempted to compel her to sign a document in Sinhala, a language she could not read. She said that when she refused, they took photographs of her and her young daughter.³⁸

The two families' legal cases have faced repeated and consistent delays. Whilst crucial evidence had been provided by three eyewitnesses, all three later retracted their statements and backed out of testifying.³⁹ In May 2019, Gotabaya Rajapaksa had been summoned by the Jaffna Magistrate's Court to give evidence in the case, but the summons was quashed in November 2020, a year after he had been elected President.⁴⁰ The families still have no updates about the fate of Kugan or Lalith.

³⁴ <https://www.srilankacampaign.org/please-join-amnestys-urgent-action-over-two-missing-journalists/>

³⁵ <https://groundviews.org/2011/12/19/disappearance-of-human-rights-defenders-political-activists-lalith-kumar-weeraraj-and-kugan-murugan-on-9th-december-2011/>

³⁶ <https://groundviews.org/2011/12/19/disappearance-of-human-rights-defenders-political-activists-lalith-kumar-weeraraj-and-kugan-murugan-on-9th-december-2011/>

³⁷ <https://www.bbc.co.uk/news/world-asia-16142640>

³⁸ <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3754972017ENGLISH.pdf>

³⁹ <https://www.colombotelegraph.com/index.php/after-two-years-lalith-and-kugan-still-missing/>

⁴⁰ <https://www.sundayobserver.lk/2019/05/26/news/gota-summoned-jaffna-habeas-corpus-probe>, and <https://www.tamilguardian.com/content/court-appeal-quashes-summons-issued-gotabaya-over-disappeared-tamils-case>

There has been almost no accountability for disappearances which occurred during the JVP uprising of the late 1980s. President Gotabaya Rajapaksa, and his Chief of Defence Staff Shavendra Silva, are credibly accused of involvement in disappearances which occurred during the 2000s, whilst Rajapaksa was Secretary to the Ministry of Defence, and Silva commanded 58th Division. Beyond this, however, they are also both associated with disappearances when both were military officials serving in Matale District in the late 1980s.⁴¹ Like Gotabaya Rajapaksa, UNP politician Ranil Wickremesinghe has also been linked with disappearances during the uprising. Wickremesinghe figured prominently in a 1997 government report into the Batalanda Housing Complex, which was allegedly used to torture, detain, and forcibly disappear youths.⁴² Despite these allegations, Ranil Wickremesinghe was appointed Prime Minister in May 2022, his sixth stint in that role.

Similarly, those responsible for disappearances at the end of the civil war have faced few consequences. Sarath Fonseka, who was Army Commander between 2006-2009, continues to serve as a prominent member of the opposition, despite holding command responsibility for those who were disappeared by the army during that time. Countless other alleged perpetrators continue to serve in various civilian functions, including the army, navy, police, and civilian government. This is particularly traumatic for families, who see alleged perpetrators in positions of power and comfort, whilst their own loved ones are nowhere to be seen.

Sri Lanka has failed to uphold key articles of the ICCPR and has rejected various critical international accountability processes. Instead of progress on transitional justice there are reprisals against activists. Through a series of resolutions, the United Nations raised the hopes of victims' families that something tangible would be done on the ground. Accountability remains elusive.

Yet, despite the seemingly insurmountable odds, local struggles for justice continue. This courage is witnessed in individual campaigns like Sandya Ekneligoda's campaign for the truth about Prageeth as well as coalitions such as the Association for Relatives of Enforced Disappearances, North and East. The international community must support courageous victims and activists who continue to campaign for truth.

⁴¹ https://itjpsl.com/assets/ITJP_1989_mass_grave_report_v6_WEB.pdf

⁴² <https://www.lankaweb.com/news/items/2015/08/03/demons-of-batalanda-who-was-behind-them/>, and <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3728212015ENGLISH.pdf>

Sri Lanka's Failing Domestic Processes

The National Human Rights Framework (Art 2.3, 14.1)

*“The 20th Amendment to the Constitution removes important checks and balances, **eroding safeguards that are essential for the rule of law.**”*

Sri Lankan lawyer, August 2021, name redacted for protection

Sri Lanka is failing to support victims in their campaigns for justice, which can be seen in the glacial pace of emblematic cases.⁴³ Victims' families highlight the inadequacy of criminal investigation due to political interference. The criminal justice system is slow, susceptible to political pressure, and lacks adequate witness protection measures. Victims' families constantly complain about the enormous backlog of cases in the Courts, which makes accessing justice difficult and exhausting. In addition, the 20th Amendment has politicised institutions, further eroding confidence in the possibility of accountability.

Lack of independence of oversight bodies

Civic freedom has deteriorated since the government of President Gotabaya Rajapaksa enacted the 20th Amendment to the Constitution in October 2020. That amendment strips away the independence of key institutions and enhances the powers of the Presidency, including via appointments to the judiciary. From victims' perspectives this presents a grave threat to the human rights framework which now is more vulnerable to politicization.⁴⁴

Political appointments to key human rights and accountability institutions such the Office of Missing Persons (OMP), without parliamentary oversight, have weakened their independence. Victims' families feel the 20th Amendment will block any progress on accountability.

*“How can victims have **any faith** in the justice system when institutions like the OMP are **politicised?**”*

Sandya Ekneligoda, phone interview, September 2021.

⁴³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695>

⁴⁴ <https://www.srilankacampaign.org/one-year-on-independent-institutions-under-the-20th-amendment/>

Sri Lankan Human Rights Commission

The Human Rights Commission of Sri Lanka (HRCSL) is responsible for monitoring and investigating alleged violations of constitutional rights in Sri Lanka and for recommending government action to promote and protect human rights. In October 2021, the Global Alliance of National Human Rights Institutions (GANHRI) recommended the HRCSL be downgraded from 'A' to 'B' status, due to its lack of action on several critical human rights issues; the change in appointment process; and its lack of religious, ethnic, and gender pluralism.⁴⁵

This related in part to the appointment of several Rajapaksa allies to the HRCSL in December 2020, including Dr. Jagath Balasuriya, who had been a Deputy Minister under the government of former President Mahinda Rajapaksa.⁴⁶ Dr. Balasuriya has since been replaced as Chairperson by retired Justice Rohini Marasinghe, who had been controversially appointed to the Supreme Court by President Mahinda Rajapaksa in 2013 ahead of more senior judges, which led the Bar Association of Sri Lanka to raise concerns about the independence of the judiciary.⁴⁷

The Asian NGO Network on National Human Rights Institutions notes the 20th Amendment 'grossly undermines the credibility of the Human Rights Commission of Sri Lanka (HRCSL), raising questions on the Commission's compliance to international standards'.⁴⁸ Victims feel that the Commission does not have the will or the power to address more serious issues such as the protection of military officers from proper criminal investigation, and have frequently complained about the difficulty in reporting issues to the HRCSL.

⁴⁵ https://ganhri.org/wp-content/uploads/2021/12/SCA-Report-October-2021_EN.pdf

⁴⁶ <https://web.archive.org/web/20101013014657/>, and http://www.parliament.lk/directory_of_members/ViewMember.do?memID=2086

⁴⁷ <https://www.themorning.lk/hrctl-chairman-pc-approves-retired-sc-judge-rohini-marasinghe/>, and <https://www.sundaytimes.lk/130428/news/appeal-court-judge-marasinghe-promoted-to-supreme-court-42467.html>

⁴⁸ <https://island.lk/president-appoints-new-chairperson-members-to-human-rights-commission/>, and https://www.forum-asia.org/uploads/wp/2021/05/SCA-GANHRI-Submission_Stakeholder-Information-HRCSL-Fin.pdf

Obstacles to Justice and Accountability



Whilst the mechanisms established by the Sri Lankan state to provide justice for victims of enforced disappearances have totally failed to produce results, the government has continued to use repressive measures against families, journalists, activists, and others who have demanded truth and justice.

Freedom of Expression, Assembly and Association (Arts. 19, 21, 22)

*“The State party should refrain from any measures amounting to **intimidation or harassment** taken against persons exercising their right to freedom of expression... It should vigorously investigate all cases of **threats and attacks** against journalists, lawyers, clergymen, political activists, members of non-governmental organizations and human rights defenders, **hold the perpetrators accountable** and provide **effective remedies to victims.**”*

Concluding Observations Sri Lanka ICCPR Review, 2014.⁴⁷

The intimidation and harassment of families of the disappeared, journalists, and human rights defenders is ongoing. Family members have reported daily calls and home visits from Sri Lankan intelligence officers, and have regularly been summoned for interrogation by the Terrorism Investigation Division (TID).⁵⁰ In February 2021, the TID summoned the secretaries of the Vavuniya

⁴⁹

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLKA%2fCO%2f5&Lang=en

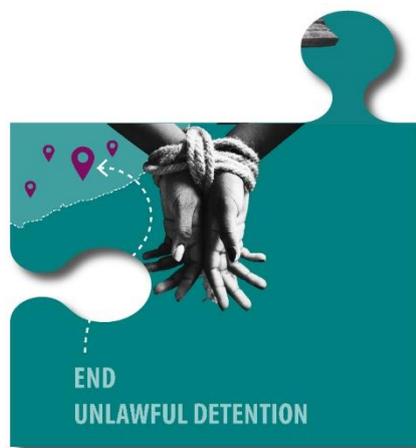
⁵⁰ <https://www.justsecurity.org/75095/heeding-victims-voices-the-struggle-of-tamil-families-of-the-disappeared-in-sri-lanka/>

DISAPPEARANCES IN SRI LANKA: A CONTINUING CRIME

Families of the Disappeared Association and the North-East Relatives of the Missing Persons Association for interrogation, questioning them about their activities, sources of income, and information that was to be presented to the upcoming session of the Human Rights Council.⁵¹

Protests by families of the disappeared are frequently subjected to intimidation by security forces. In March 2022, as Tamil families travelled to Jaffna to protest the visit of then-Prime Minister Mahinda Rajapaksa, security forces physically prevented them from leaving their bus, as police officers and heavily armed soldiers blocked the protestors.⁵² Journalists who cover sensitive issues, particularly in the North and East, often face intimidation and harassment, or even violence.⁵³ Some Tamil asylum seekers in the UK have even alleged that they were tortured by security forces for protesting alongside the families of the disappeared.⁵⁴

Counter-terrorism measures – emergency powers flexed to control (Art 9 & 14)



The continued use of the Prevention of Terrorism Act (PTA) despite repeated state promises to repeal this draconian legislation remains a serious concern. The PTA, initially introduced in 1979, has been used for decades to arrest and detain people – particularly Tamils – for extended periods of time without charge or due process safeguards. Since the Easter Bombings in 2019, the PTA has also been used to arrest and detain hundreds of Muslims, for months or years on end.

The PTA is used to arrest or threaten journalists, lawyers, activists, and families of the disappeared. Those arrested under the PTA have reported being tortured and the Act has historically facilitated enforced disappearances. In 2017, the UN Working Group on Enforced or Involuntary Disappearances called the Act ‘one of the key enablers of arbitrary detention for over four decades.’⁵⁵

In late January, the government published some proposed amendments to the PTA. However, these do not bring the legislation in line with Sri Lanka’s international obligations. The reforms still allow

⁵¹ <https://www.tamilguardian.com/content/sri-lankan-tid-investigate-vavuniya-families-disappeared-association-secretary-and-president>, and <https://www.tamilguardian.com/content/sri-lankan-tid-continues-interrogation-north-east-families-disappeared-personnel>

⁵² <https://www.tamilguardian.com/content/standoff-between-sri-lankan-police-and-tamils-protesting-pms-visit-jaffna>

⁵³ <https://www.frontlinedefenders.org/en/case/human-rights-defender-and-journalist-kanapathipillai-kumanan-intimidated-police>, and <https://srilankabrief.org/sri-lankan-soldiers-apologise-to-attacked-tamil-journalist-after-initially-denying-the-assault/>

⁵⁴ <http://www.jdslanka.org/index.php/analysis-reviews/human-rights/1040-alive-from-the-abyss-continuing-abductions-and-torture-in-sri-lanka>

⁵⁵ <https://www.ohchr.org/en/press-releases/2017/12/sri-lanka-must-urgently-implement-reforms-end-arbitrary-detention-un-rights?LangID=E&NewsID=22543>

for arbitrary arrest and prolonged detention without adequate judicial scrutiny. Additionally, the Amendment does nothing to address the overly broad definition of terrorism within the Act, or the admissibility of confessions as evidence during trials. This latter provision has long been linked to the torture of detainees by security forces, in order to produce false confessions. The reforms are thus woefully insufficient.⁵⁶

Whilst some detainees with well-publicised cases were released on bail in the run up to the Human Rights Council session in February-March 2022, such as Hejaaz Hizbullah and Ahnaf Jazeem, many more continue to languish in detention, often being held for months or even years without any conviction. In May 2022, one Tamil prisoner was cleared of all charges and released from prison after 13 years in detention; he was just 21 years old when initially arrested.⁵⁷

*“They are using PTA to create fear among activists. When we talk to the families of the disappeared, they say they can be arrested at any time. Police are arresting people for posting pictures on Facebook. **They can arrest you for anything.**”*

Tamil human rights activist from Northern Sri Lanka, quoted by Human Rights Watch, February 2022.⁴⁷

⁵⁶ <https://www.amnesty.org/en/documents/asa37/5372/2022/en/>

⁵⁷ <https://www.tamilguardian.com/content/arrested-tortured-and-finally-acquitted-after-13-years>

⁵⁸ https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act#_ftn9

Recommendations

The bodies set up by the Sri Lankan government to deal with the issue of enforced disappearances have totally failed to deliver accountability, truth, and justice to the families of the disappeared, leaving them totally disillusioned with the authorities. The Sri Lankan state has demonstrated a total unwillingness to live up to its international obligations on this matter, and so the international community must use all available mechanisms to support these families.

UN member states should:

- Push for a **strong resolution** on Sri Lanka at the 51st Session of the Human Rights Council in September-October 2022. This new resolution should include a renewal of the evidence-gathering mechanism established by resolution 46/1, which allows the Office of the High Commissioner on Human Rights to collect, consolidate, analyse, and preserve evidence relating to gross human rights violations and violations of international law, including enforced disappearances.
- Refer Sri Lanka to the UN **Committee on Enforced Disappearances** (CED), under Article 32 of the Convention on Enforced Disappearances.
- Use their **trading relationships** with Sri Lanka as leverage to achieve truth and justice for the families of the disappeared, as well as the repeal of the Prevention of Terrorism Act.
- Ensure that conditions for **economic aid** to Sri Lanka prioritise human rights and governance concerns, including:
 - a) **accountability** for individuals and institutions credibly accused of involvement in enforced disappearances;
 - b) a clear path to **truth and justice** for families of the disappeared; and
 - c) legal or constitutional changes to ensure the independence of **key human rights institutions**.