

February 29<sup>th</sup> 2024

## **Addressing Enforced Disappearances in Sri Lanka: Challenges, Concerns, and the Call for International Intervention**

Dear Committee on Enforced Disappearances,

We appreciate the opportunity to address a significant and enduring concern impacting Sri Lanka, particularly the Tamil community in the Northern and Eastern regions. The deplorable practice of Enforced Disappearances strikes at the core of our social structure, fracturing families and eroding the fundamental principles of truth, justice, and accountability. We would like to delve into the pressing issues surrounding enforced disappearances in Sri Lanka. Our examination covers various facets, including:

- Challenges to judicial independence;
- Impunity in cases of enforced disappearances;
- Intimidation of victims' families;
- Recent cases of concern;
- Shortcomings of the Office of Missing Persons (OMP);
- Concerns surrounding Sri Lanka's legal framework;
- Observations on Sri Lanka's 2023 report; and
- An urgent call for United Nations (UN) intervention.

Each section sheds light on critical aspects of the ongoing crisis and underscores the necessity for immediate action to ensure accountability, justice, and redress for all those affected.

### ***Challenges to Judicial Independence***

The general lack of independence, conflict of interest and undue influence over the judiciary is particularly alarming, in light of the fact that many, if not most of the disappearance cases were at the hand of the army, police or state party actors, operating in the name of the government. Examples can be seen with the Attorney General's Department's role in acting as both prosecutor and defender in cases, which demonstrates a complete disregard of the fundamental principles of independence and justice<sup>1</sup>. Other examples of undue influence can be seen with the lack of transparency in the appointment of OMP members, which implies undue influence<sup>2</sup>. The conflict of interest and lack of independence undermines the pursuit of truth and justice, perpetuating impunity and denying closure to the victims' families. Impunity for perpetrators is

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<https://www.ungeneva.org/en/news-media/meeting-summary/2023/03/dialogue-sri-lanka-experts-human-rights-committee-comment>

<sup>2</sup>

<https://www.ohchr.org/sites/default/files/documents/issues/disappearances/allegations/2022-11-18/General-allegation-Sri-Lanka-127.pdf>

gravely concerning, especially since it takes substantial effort to enable victims to bring their case forward in the pursuit of justice, to then be rebutted by the courts. Undue influence by the government of Sri Lanka over the judiciary, to protect perpetrators under the guise of “*political victimisation*”,<sup>3</sup> has resulted in the prosecution of those who brought the claim forward instead. This not only undermines the concept of justice but deters other victims to step forward to have their day in court and seek the justice they rightly deserve.

### ***Impunity in Cases of Enforced Disappearances***

We have seen it widely reported that not only have perpetrators received impunity for their crimes, but in some cases, perpetrators were promoted to senior roles<sup>4</sup>. The presence of individuals suspected of criminal responsibility in powerful positions within the military and government exacerbates the problem. Despite credible evidence implicating them in enforced disappearances, these individuals remain in their roles without repercussion or accountability. This lack of political will to investigate and prosecute such cases perpetuates a culture of impunity and erodes public trust in the justice system.

There have been no tangible improvements to prevent such occurrences from happening in the future, even though this issue has been raised with the Working Group and subsequently the government of Sri Lanka.<sup>5</sup> What is equally concerning is that some military officials have been assigned to civilian posts, which has and will continue to intimidate victims and families of victims, furthering the Sri Lankan government's efforts to deter victims and undermine the judicial process<sup>6</sup>.

### ***Intimidation, Harassment and Surveillance of Victim's Families***

It has been brought to our attention that recently an NGO group from the Southern region of Sri Lanka presented to your Committee regarding two witnesses from the Northern region of Sri Lanka. It is our understanding that both witnesses were advised to not consult with Tamil NGOs, as it was falsely claimed to the witnesses that Tamil NGOs are linked to the LTTE.

This is concerning as such witnesses are being held back from all the various supports available to them in their language. Number of issues should have been considered as these witnesses presented their statements, namely:

- Were the statements provided accurately and correctly translated into English;
- Were any crucial issues for the Committee lost in translation or purposely omitted;
- Were the statements translated and provided to the Committee as close to Verbatim;

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<sup>3</sup> *ibid* footnote 2

<sup>4</sup> *ibid* footnote 1

<sup>5</sup>[https://www.itjpsl.com/assets/shavendra-Silva\\_-final-dossier.pdf](https://www.itjpsl.com/assets/shavendra-Silva_-final-dossier.pdf)

<sup>6</sup> *ibid* footnote 2

- Given that the witnesses were advised to not speak to other Tamil NGOs, how much of what was being said in the witness statements, were given under duress; and
- Did the NGO in question lead their witness.

If our concerns are correct, this could mean the NGO in question could have been leading their witnesses and coaching their witnesses on what to specifically say, therefore subsequently resulting in evidence tampering.

It is generally acknowledged that the responsibility to protect victims and the families of victims does not seem of paramount importance to the Sri Lankan government, as can be seen with the recent arbitrary arrest of demonstrators in early January of this year<sup>7</sup>, where Jentta, a mother and the leader of *Vavuniya's Families of the Disappeared* group was arrested and detained<sup>8</sup>. It is our understanding that there has been a general practice of intimidation, harassment and surveillance of such families, in addition to obstacles being placed to prevent families from obtaining information regarding their missing loved ones.<sup>9</sup>

Equally concerning are the cases where families have received Certificates of Absences, or the cases where through state intervention families are forced to accept their missing loved ones as dead, for the purpose of dealing with estate matters.<sup>10</sup> Does it mean that these particular cases of enforced disappearances are no longer going to be investigated? What about the cases that exceed the 20-year statute of limitations? Given that the majority of disappearances took place prior to and leading to 2008, it seems that many of those cases have run out of time, or the time is ticking on some of these cases. Will these families not receive any answers? Where is the truth and justice for these cases? The Sri Lankan government needs to provide more clarity on this concerning issue.

Since the end of the war in 2009, it has also been noted that a large number of missing persons are babies, children and youth which is deeply concerning. Where are these children?<sup>11</sup>

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<https://www.tamilguardian.com/content/pictures-and-video-sri-lankan-police-arrest-tamil-families-disappeared-leader>

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<https://www.tamilguardian.com/content/tamil-families-disappeared-demand-release-tamil-mother-arrested-during-ranils-north-east>

<sup>9</sup> *ibid* footnote 2 and

<https://www.hrw.org/report/2023/09/18/if-we-raise-our-voice-they-arrest-us/sri-lankas-proposed-truth-and-reconciliation>

<sup>10</sup> *ibid* footnote 2

<sup>11</sup> <https://itjpsl.com/assets/English-15-May-2018-Itjp-Press-release-Disappearance-Website-english.pdf> and <https://sangam.org/disappeared-tamil-babies-of-sri-lanka/>

### **Recent Cases of Concern**

Recent issues regarding enforced disappearances have been noted by the Working Group, where it was noted that in early 2022 there were reports that the White Van Disappearances had been reinstated.<sup>12</sup> Are these random acts by unknown parties or are they being conducted by State party actors? This was a frequently used war time practice by the Sri Lankan government to intimidate, torture and kill innocent civilians, in the name of National Security. Where is the justification now for the recurrence of this inhumane and cruel practice against the Tamil people?

We have seen, that despite the report submitted in August 2023, inhumane and cruel practices are continuing in the Northern regions of Sri Lanka against Tamil youth, which is demonstrated in the recent case of the death of Nagarasa Alex, who had been arbitrarily detained and taken to a secret torture room housed at the local police station, for merely contesting a parking violation at a gas station. There is no evidence of Nagarasa Alex being provided immediate access to a lawyer or access to his family members during his detainment and while he was being tortured. As a result of Alex revealing what happened to him on social media, Nagarasa Alex was then brutally murdered.<sup>13</sup>

There have also been other recent cases of arbitrary arrests and interrogations that took place at the Maaveerar Naal events in Sri Lanka, including the recent Mullaitivu kite festival where a 16-year-old boy was interrogated.<sup>14</sup> The actions of the police are deeply troubling, particularly in relation to enforced disappearances, as these incidents are merely one step short of such disappearances. Where is the oversight in these cases? What actions are those in positions of authority taking while these occurrences unfold? Are those in positions of authority endorsing such actions?

These recent cases coupled with the ongoing intimidation, harassment and surveillance of victim's families exemplifies that enforced disappearances is a matter not taken seriously by the Sri Lankan government, and their behaviour suggests that there could be a recurrence of enforced disappearances in Sri Lanka, if it has not already started. The Sri Lankan government has not demonstrated any concrete actions or adopted any actionable measures to prevent the recurrence of enforced disappearances.

### **Shortcomings and the Failures of the OMP**

In its current state, despite the OMP Act and the powers and functionality granted by the OMP Act, the OMP functions more like a commission of inquiry, offering observations and simply matching government documents to missing persons, and issuing reparations. This is contrary to what the OMP's function should be to comply with the requirements of the Convention, which is to actively uncover fresh evidence, deliver concrete answers to the victim's families on what

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<sup>12</sup> *ibid* footnote 2

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<https://www.tamilguardian.com/content/tamil-youth-killed-sri-lankan-police-custody-multiple-injuries-found-body>

<sup>14</sup> <https://www.tamilguardian.com/content/sri-lankan-police-interrogate-tamil-boy-over-tamil-eelam-kite>

led to the victim's disappearance, and options on how to obtain justice. The OMP therefore does not appear to have any truth seeking capabilities which inhibits their ability to facilitate the conviction of perpetrators. Additionally, the OMP, despite being established with the noble intention of addressing enforced disappearances, has faced numerous challenges in fulfilling its mandate. It struggles to navigate bureaucratic hurdles and lacks the necessary authority and resources to conduct meaningful investigations<sup>15</sup>. This falls short of the expectations and needs of the affected communities, who have spent years yearning for truth and closure. We fear that the OMP will follow the trend of past reconciliation commissions that have proved to not be useful and simply operate to deflect blame on the government.

### **Concerns Surrounding Sri Lanka's Legal Framework**

In addition to the OMP Act, the existing legal framework, including the Enforced Disappearances Act and the Prevention of Terrorism Act, are inadequate and in dire need of reform. These laws, instead of upholding justice, have been used to suppress dissent and perpetrate human rights violations. It has been noted by the Human Rights Committee that the Prevention of Torture Act defines Terrorism in a way that allows for minorities and political opponents to be targeted<sup>16</sup>. There is also a growing concern regarding the new Anti-Terrorism Bill that was introduced in March 2023 which broadens the powers of the government to criminalize protests, which will subsequently inhibit freedom of speech<sup>17</sup>. Collectively these mechanisms may enable and encourage Enforced Disappearances in the name of National Security.<sup>18</sup>

The ever-changing landscape of Sri Lankan politics and the change in power has shaped how seriously enforced disappearances have been treated. The current government of the day, was the same party that pulled Sri Lanka out of *Resolution 30/1 Promoting reconciliation, accountability and human rights in Sri Lanka* and was the same political party in power that widely contested and condemned the OMP Act, upon its creation.<sup>19</sup>

### **Observations on Sri Lanka's 2023 Report**

In the August 2023 report submitted by Sri Lanka, a number of existing domestic legislation and their respective sections are referenced as evidence of safeguarding against enforced disappearances, however enforced disappearance is not specifically stated or defined. It is not clear whether these legislation contain other provisions within themselves that override the measures to safeguard enforced disappearances. The same can be said of other domestic legislation that may negate or override the power of these legislation, regarding the prevention of enforced disappearances. The Sri Lankan government's lack of transparency forces one to conduct statutory review and statutory interpretation of domestic legislation to ensure there are

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<sup>15</sup> *ibid* footnote 9 and

<https://groundviews.org/2018/04/22/why-the-office-on-missing-persons-must-think-outside-the-box/>

<sup>16</sup> *ibid* footnote 1

<sup>17</sup> *ibid* footnote 9

<sup>18</sup> *ibid* footnote 9

<sup>19</sup> <https://academic.oup.com/ijtj/article/17/1/157/7078879>

no conflicts within Sri Lanka's legislative framework. This therefore implies that enforced disappearances are not genuinely safeguarded.

The Sri Lankan government should have strengthened, amended, or repealed existing laws, and the legal and administrative frameworks because it is evident that they hinder truth, justice and accountability. Additionally, the Sri Lankan government should have safeguarded the independence and enabled the effectiveness of mechanisms like the OMP by providing them with the necessary resources, authority, and support to carry out their mandates effectively. Despite the Sri Lankan government claiming they wish to cooperate to enable reconciliation and accountability, we have not seen any real and concrete measures.

The statistics provided in the report by Sri Lanka in August 2023 provided a list of the numbers of enforced disappearances, which did not provide a breakdown based on language, age and sex, and is therefore lacking in showing trends and patterns. We do not feel that the numbers accurately reflect the number of disappeared in the Tamil areas of Sri Lanka.

It is crucial to acknowledge that the victims of enforced disappearances in Sri Lanka are predominantly Tamil, and they bear the brunt of this egregious violation of human rights. For far too long, the Tamil community has suffered disproportionately, enduring the agony of uncertainty and the anguish of loss as their loved ones vanish without a trace.

This stark reality underscores the urgent need for targeted measures to address the specific needs and concerns of Tamil victims and their families, ensuring that they receive the truth, justice and redress they deserve.

The report submitted by Sri Lanka in August 2023 left us with more questions than answers, which was disappointing since not only was the report overdue, but it did not contain any real concrete, demonstrable and measurable changes that should have been implemented by now, when they have not. We understand that Sri Lanka has until June of this year to respond to the Committee's concerns, however we do not feel that any real concrete changes will be made within this timeframe, and we do not believe that the Sri Lankan government is capable of providing further clarity or being transparent in their responses to your queries. We also fear that Sri Lanka may not submit their report on time and be delayed in responding, when meanwhile time is ticking away for families of victims and further atrocities are likely to be committed in this time frame.

### ***Urgent Call for UN Intervention***

The international community, particularly the United Nations, must play a greater role in overseeing justice for these crimes. The UN has a moral imperative to uphold human rights and hold perpetrators of enforced disappearances accountable. To this end, the establishment of an independent investigation, overseen by the UN, is paramount. Such an investigation would provide impartial scrutiny and ensure that justice is served without bias or prejudice. Additionally, the appointment of a special rapporteur for Sri Lanka would signal the UN's commitment to addressing the issue of enforced disappearances comprehensively and effectively. It is imperative that the international community stands in solidarity with the victims and survivors, working tirelessly to end the cycle of impunity and secure justice for all those affected.

In conclusion, enforced disappearances represent a grave violation of human rights and demands urgent attention and action. It is imperative that we address the structural deficiencies within the Sri Lankan government's justice system and empower mechanisms like the OMP to fulfill their mandates effectively. Only through concerted efforts and genuine commitment to truth, justice and accountability can we bring an end to the scourge of enforced disappearances and provide solace to the victims' families.

Thank you.

Katpana Nagendra- General Secretary

Uma Ruthiramoorthy- Legal Volunteer

*Tamil Rights Group (TRG) is a not-for-profit human rights organisation registered in Canada acting globally to support Eelam Tamils in the quest to bring transitional justice and a lasting solution for the Tamils in Sri Lanka. We relentlessly pursue means to uphold human rights through global diplomacy, together with legal avenues available under international law and human rights principles. In November 2021, TRG submitted a major Communication under Article 15 of the Rome Statute to the International Criminal Court (ICC) requesting a preliminary examination into crimes against humanity committed against Eelam Tamils within territories of states parties to the ICC.*