



## **VISIT OF THE UN WORKING GROUP ON ENFORCED AND INVOLUNTARY DISAPPEARANCE TO SRI LANKA**

The UN Working Group on Enforced and Involuntary Disappearances (WGEID) is preparing for its first visit to Sri Lanka in 15 years. This important visit will raise the hopes of thousands of families of the disappeared that with the UN's help they may finally discover the fates and whereabouts of their missing relatives and have the opportunity to pursue justice and reparation.

All communities have experienced enforced disappearances but victims may not share a common understanding of the problem or seek the same solutions. With huge numbers of Sri Lankans in search of truth, there are corresponding variations in their opinions about accountability.

WGEID should seek out and listen carefully to the views of family members of the disappeared. It should acknowledge the significant challenges to accountability that persist in Sri Lanka and clearly articulate its own limitations as well. The Government of Sri Lanka should facilitate these exchanges and direct all officials to cooperate fully with the delegates.

Tens of thousands of people in Sri Lanka have been forcibly disappeared. Sinhalese youth suspected of links to the Janatha Vimukthi Peramuna (JVP) were particular targets in the late 1980s and early 1990s, and Tamils were victimized throughout the course of the long armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE) that finally ended in May 2009. Muslims (both activists and prominent community members) have also been suspected victims of enforced disappearances.

WGEID's first visit in October 1991 investigated and ultimately confirmed reports that state forces had engaged in enforced disappearances. On the basis of that visit and successive ones in 1992 and 1999, the Working Group made important recommendations to the Sri Lankan Government aimed at addressing existing cases of enforced disappearances, preventing new ones and bringing perpetrators to justice. Unfortunately, most of these recommendations were never implemented. Violations continued to be reported, albeit at lower levels than at their peak in 1989-1990 when an estimated 30,000 or more people, many of them minors, are thought to have been forcibly disappeared in government counter-insurgency campaigns.<sup>1</sup> The vast majority of enforced disappearances were never effectively investigated or prosecuted.

At best, in rare cases where an enforced disappearance case has made it to a court it has been handled as an abduction, a wrongful confinement or a conspiracy case since there is no crime of enforced disappearance under Sri Lankan law. The failure of Sri Lankan law to recognize the

principle of command responsibility has also hindered prosecution of superior officers complicit in human rights violations. Lack of effective witness protection has been another obstacle to effective prosecution.

Despite the tens of thousands of reported enforced disappearances in the late 1980s alone, there were fewer than 30 convictions for abduction or wrongful confinement (charges often associated with enforced disappearances) between 1987 and 2007. Only two of 18 well-known cases of extrajudicial executions and enforced disappearances documented by Amnesty International dating back to the 1980s resulted in convictions, and both were of low ranking officers on lesser charges than murder.<sup>2</sup> These cases, 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.<sup>3</sup>

In August 2009 a former Senior Superintendent of Police (SSP) and four other policemen were sentenced to five years in prison by the Gampaha High Court for abducting two young brothers Udayachandra and Ratnachandra Liyanage with intent to murder in July 1989. The youths were illegally detained in a secret torture facility at the Batalanda Housing Complex where Ratnachandra died in custody. His brother escaped and eventually testified against the police.<sup>4</sup>

The investigation led by the UN Office of the High Commissioner for Human Rights (OHCHR)<sup>5</sup> into alleged abuses committed during the armed conflict between February 2002 to October 2011 found that based on the “sheer number of allegations, their gravity, recurrence and the similarities in their *modus operandi*, as well as the consistent pattern of conduct they indicate”<sup>6</sup> that alleged abuses it documented could amount to war crimes and/or crimes against humanity. These included “widespread and unlawful killings of civilians and other protected persons ... arbitrary arrest and detention enforced disappearances and extrajudicial killings ... widespread torture including rape and other forms of sexual violence ... abductions and of forced recruitment of adults, extensive recruitment and use of children ... by the LTTE over many years,”<sup>7</sup> as well as alleged direct military attacks on civilians, denial of humanitarian relief and systematic deprivation of liberty of displaced people on the basis of ethnicity. The findings of the investigation, known as OISL, have galvanized debate in Sri Lanka about human rights accountability and inspired government commitments to establish a truth, justice and reparation process taking advantage of international expertise. But faith in the possibility of justice for enforced disappearances in Sri Lanka has been sorely tested by years of impunity.

Families have repeatedly appealed to domestic and international bodies for help tracing their loved ones missing after arrest or abduction. A Presidential Commission to Investigate into Complaints of Missing Persons (PCICMP or Paranagama Commission after its Chair, Maxwell Paranagama) established by Sri Lanka’s former President, Mahinda Rajapaksa in August 2013 and extended by the current government, has received more 18,000 complaints of civilians missing from northern and eastern Sri Lanka between 1983 and 2009,<sup>8</sup> but few who made complaints have received answers. The Commission was criticized for its lack of independence, poor investigative procedures and ineffective protection of witnesses.<sup>9</sup> It failed to consult actively with

families of the disappeared in the design of its approach and proceedings. In October 2015 Sri Lankan authorities, noting a widespread lack of faith in the Commission, announced that they were replacing the Commission with another body that the government hoped would be more effective.

The Paranagama Commission was originally mandated to investigate only reports of missing persons and neither of the Commission's interim reports on investigations under that mandate have been made public. Its brief was later expanded to look into alleged war crimes with the assistance of a panel of international lawyers hired by the Rajapaksa government. In August 2015 it submitted a report to the President on the second component of its mandate. That report was tabled in Parliament in October. The report places most blame for civilian casualties during the conflict on the LTTE, which it concludes used civilians as human shields. But it makes strong recommendations for incorporating the core crimes applicable in non-international armed conflicts into Sri Lankan law and particularly the doctrine of command responsibility.<sup>10</sup>

It calls for independent judicial inquiry of what it says are "credible allegations, which if proved to the required standard, may show that some members of the armed forces committed acts during the final phase of the war that amounted to war crimes giving rise to individual criminal responsibility,"<sup>11</sup> including alleged extrajudicial executions of surrendered LTTE leaders and others *hors de combat* who died in army custody. It notes specifically the apparent extrajudicial executions caught on video and broadcast by Channel 4 in the UK and the busloads of persons who surrendered in the last days of the conflict and subsequently disappeared.

### **Promises of Progress**

Since the election of President Maithripala Sirisena in January, Sri Lanka has shown a new willingness to acknowledge past abuses and commit to reforms. At the 30<sup>th</sup> Session of the UN Human Rights Council in September Sri Lanka promised to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact a domestic law making enforced disappearance a crime. It made a number of other important commitments to enact legal and security sector reforms that Amnesty International had long recommended. These included promises to repeal the draconian Prevention of Terrorism Act and replace it with legislation that meets international standards; to review the cases of detainees held for long periods without charge or trial and ensure the release of those without evidence against them; ensure effective witness protection; consult with victims and families in the design of truth and justice mechanisms; release reports of past inquiries into alleged human rights violations; and extend invitations to UN Special Procedures.

Amnesty International believes these to be vital steps to protect human rights and account for the past. The failure of successive governments to end the practice of enforced disappearances, clarify the whereabouts or fates of victims and prosecute persons suspected of committing this crime under international law has done incalculable harm to Sri Lankan society and eroded public faith in the rule of law. Continued failure to account for violations against Sri Lanka's Tamil minority in particular fuels grievance and alienation in that community that could impede efforts at communal reconciliation.

The WGEID visit to Sri Lanka offers an important opportunity for the UN and the Government of Sri Lanka to work collaboratively to end enforced disappearances, account for the past and take effective measures to ensure that the crime can never again be committed with impunity in Sri Lanka. We believe the following steps will help that process.

- **Consult victims and families to determine what they need, want and expect from an accountability process:**

Creating effective mechanisms that will deliver truth, justice and full reparation, including guarantees of non-recurrence, will require the active and informed participation of Sri Lankans affected by those violations. WGEID should meet with families of the disappeared and others concerned about enforced disappearances and should encourage and support the Government of Sri Lanka to initiate wide reaching and meaningful public consultation with victims and their families and all others concerned to understand their needs and expectations regarding truth, justice, full reparation including guarantees of non-recurrence and ensure their full participation in any processes.

- **Consult lawyers and civil society activists on the development of mechanisms and areas for legal reform and encourage the Sri Lankan authorities to continue to do so:**

The political transition in Sri Lanka has created greater openness for civil society to discuss human rights protection and accountability safely. A number of Sri Lankans are in the process of formulating recommendations aimed at addressing enforced disappearances and other alleged crimes under international law, especially those that took place in the latter stages of the armed conflict. The visit of WGEID provides an important opportunity to discuss these issues with Sri Lankan civil society.

- **Visit places of detention, particularly sites of alleged secret or incommunicado detention:**

Amnesty International has long called on Sri Lanka to undertake a public and impartial investigation into the alleged use of secret and incommunicado detention and acts of torture, extrajudicial executions and enforced disappearances that may have taken place under such conditions, with a view to holding state actors accountable for actions and providing effective remedies for victims of such violations. This includes investigating sites that are alleged to have been used to detain people in the past, even if they are now being used for other purposes.

Where possible, WGEID should request visits to such sites, and should seek clarification from the government on the status of its investigation into reports of abuse in such facilities.

- **Visit sites of alleged mass graves and meet with Judicial Medical Officers, lawyers and families concerned about those cases:**

There have been allegations of evidence tampering and other official interference in the investigation of alleged mass grave sites discovered in Matale in 2012 and Mannar in 2013.<sup>12</sup> It would be very valuable for WGEID to visit those sites and meet with lawyers, family members, judicial medical officers and activists concerned about those cases.

- **Ensure that the public is kept informed about the progress of investigation into these emblematic cases as well as other investigations:**
  - **Prageeth Eknaligoda**, a political cartoonist and journalist for *Lanka-e-news*, disappeared two days before the presidential election in January 2010. After five years of inaction, in August 2015 the Sri Lankan authorities reportedly arrested several individuals for questioning in the case including a retired army intelligence officer who according to a report in a state-owned newspaper claimed that he interrogated Eknaligoda at the Girithale Army Camp.<sup>13</sup> The case is ongoing.
  - **Lalith Kumar Weeraraj and Kugan Muruganandan**, political activists, disappeared in Jaffna on 9 December 2011 while helping families of the disappeared to organize a demonstration. Their motorcycle was later found at a local police station and Kugan's wife reported that witnesses had seen the two men being abducted by a group of men with a white van, on the Point Pedro main road in Nirveli, Jaffna. Both had been arrested and questioned by the army and police previously, and Lalith's father had received threatening phone calls warning him that his son should leave Jaffna. There has been no progress in investigating this case or determining the fate and whereabouts of these activists.
  - **Sinnavan Stephen Sundararaj**, project manager at the Centre for Human Rights and Development disappeared on 7 May 2009 after his lawyer and wife reportedly witnessed his abduction by five men whilst travelling in his lawyer's car in Colombo. He had been released from more than two months in police detention without charge a few hours beforehand. Sundararaj had allegedly exposed involvement of the EPDP, a government-affiliated Tamil political party, in a child trafficking ring.
  - **Ramasamy Prabakaran**, a 42-year-old Tamil businessman, whose wife reported witnessing his abduction outside his home on 11 February 2012 just two days before hearings were due to begin in a case he had filed with the Supreme Court against senior police officers, the Attorney General and eight others alleging torture, unlawful arrest and detention. Prabakaran's wife said they were assaulted by seven armed men in plain clothes, who had been hiding in their compound when the couple arrived home. Prabakaran was grabbed by the neck and forced into a white van with the registration number 254-2106. The van then drove away towards the Colombo suburb of Dehiwala. Prabakaran had been detained on suspicion of being a member of the LTTE from May 2009 to September 2011, but was released for lack of evidence.
- **Reinforce the need for justice, truth and full reparation for enforced disappearance:**

In its reports and public statements WGEID should re-emphasize the need for accountability in Sri Lanka.

The Government of Sri Lanka should cooperate fully with WGEID's visit, including by:

- Ensuring its access to all alleged place of detention and mass grave sites, and issuing instructions for all state personnel to facilitate the Working Group's efforts.
- Ensuring that the Working Group and members of the public have easy access to the reports of all past Commissions of Inquiry in alleged enforced disappearances and other human rights violations, including reports of the Udulagama and Paranagama Commissions<sup>14</sup> which were tabled in Parliament in October.
- Welcoming the Working Group's advice, support and assistance as Sri Lanka moves forward with legal reforms and the development of justice mechanisms including its promises to: repeal and replace the Prevention of Terrorism Act, ratify the International Convention for the Protection of All Persons from Enforced Disappearance and criminalize enforced disappearances under Sri Lankan law, and pursue legal and procedural reforms necessary to investigate and prosecute persons suspected of committing crimes under international law, in accordance with international standards while respecting the rights of the accused, victims and witnesses. This should include amending the Penal Code to include the principle of command responsibility in accordance with international law.

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<sup>1</sup> Kishali Pinto-Jayawardena, 'Post-war justice in Sri Lanka – Rule of law, the criminal justice system and commissions of inquiry', International Commission of Jurists (2010), p.12, [http://reliefweb.int/sites/reliefweb.int/files/resources/04234216454178AFC12576B20038FF61-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/04234216454178AFC12576B20038FF61-Full_Report.pdf) (accessed 28 October 2015).

<sup>2</sup> The death of lawyer Wijedasa Liyanarachchi due to police torture after being forcibly disappeared in 1989, and the enforced disappearance of 25 Embilipitya schoolchildren after their arrest by the army in 1989 and 1990. Police officers linked to the Liyanarachchi case were convicted of conspiracy and wrongful confinement but received suspended sentences in 1991; their superior officer was not charged. The case was raised again by the Batalanda Commission in 1995, which found it likely that the victims had been tortured to death in the secret detention facility under investigation, but no further action was taken. Those convicted in the Embilipitya case received 10-year sentences for conspiracy, abduction with the intent to commit murder, and wrongful confinement. The convictions of four soldiers and a high-school principal were upheld after appeal, in early 2002. The commander of the Sevana Army camp where the children were detained was acquitted due to lack of evidence of his direct involvement in the abductions.

<sup>3</sup> Amnesty International, Sri Lanka: When Will Justice Be Done? 30 June 1994, ASA 37/015/1994, <https://www.amnesty.org/en/documents/asa37/015/1994/en/>

<sup>4</sup> In September 2009 the convicted officers were released on bail by the Supreme Court after they challenged their convictions. To Amnesty International's knowledge the case is ongoing.

<sup>5</sup> Report of the OHCHR Investigation on Sri Lanka (OISL), 16 September 2015, A/HRC/30/CRP.2.

<sup>6</sup> Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein via videolink to the Human Rights Council, 30 September 2015,

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<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16539&LangID=E#sthash.WycH9TF4.dpuf>, accessed 4 November 2015.

<sup>7</sup> Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein via videolink to the UN Human Rights Council, 30 September 2015.

<sup>8</sup> Previous *ad hoc* Commissions examining complaints of enforced disappearances from throughout the island received more than 40,000 complaints. Even assuming duplication these are very large numbers. Decades have passed since the first of these bodies released a report of its inquiries, but most recommendations made by Sri Lanka's Presidential Commissions of Inquiry to clarify cases, prosecute alleged perpetrators and prevent future violations have never been implemented.

<sup>9</sup> See, for example, 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/>, accessed 4 November 2015

<sup>10</sup> 'Report on the Second Mandate Of the Presidential Commission of Inquiry Into Complaints of Abductions and Disappearances', August 2015, paragraph 613, p. 152., <https://www.colombotelegraph.com/wp-content/uploads/2015/10/Paranagama-Report-.pdf> accessed 4 November 2015.

<sup>11</sup> 'Report on the Second Mandate Of the Presidential Commission of Inquiry Into Complaints of Abductions and Disappearances', August 2015, page xxv.

<sup>12</sup> In November 2012 skeletal remains were discovered during construction of a bio gas facility at Matale General Hospital. By 13 February 2013, when the mass grave was closed on court order, 154 human skeletons were uncovered. Forensic archaeologist Raj Somadeva and Judicial Medical Officer Ajith Jayasena who investigated the site concluded that the remains dated from 1986-1990 – the time of the JVP insurgency when tens of thousands of suspected JVP members disappeared at the hands of the security forces. They also concluded and that individuals buried there did not die of natural causes – there was evidence of torture and extrajudicial execution. Families of suspected victims of enforced disappearances during that period petitioned the Court asking for DNA analysis of the remains to determine whether they matched the DNA of their missing relatives. President Mahinda Rajapaksa appointed a three-person commission of inquiry: three retired judges, one of them former Secretary General of Parliament. Material alleged to be remains from the gravesite was sent to the US for carbon dating and based on the report of that analysis the Commission concluded that the remains dated from before 1950, although they agreed that the remains showed evidence of torture and murder. Dr. Ajith Jayasena has alleged that chain of custody was broken and suspects tampering with the evidence. He believes that skeletal remains reportedly sent to a laboratory in the US to determine the age of the gravesite were not actually from the Matale mass grave. Hearings recommenced in the Mannar Mass Graves case in October. In late 2013 construction workers laying a pipe discovered human bones. Excavations uncovered the remains of at least 80 people. Media reported evidence of gunshot injuries, but digging was suspended in March 2014 when the Director General of the state Department of Archaeology claimed the site was an old graveyard. Families of the disappeared were not convinced and demanded further excavation, which was approved by the court. The court also ordered an affidavit from the Mannar regional chairperson, who stated that there were no records of a cemetery in the area. Families of the Disappeared have sought to block a plan to send the remains to a US lab for analysis after the Matale mass grave experience. In August, the Mannar Magistrate ordered excavation of another alleged grave site near the first after bodies were discovered in a well.

<sup>13</sup> "CID Arrests Four Army Officers," *Daily News*, 25 August 2015

<sup>14</sup> The Udulagama Commission (Officially The Commission of Inquiry Appointed to Investigate and Inquire into Serious Violations of Human Rights which are alleged to have arisen in Sri Lanka since August 2005) wrapped up in June 2009 having examined seven of 16 cases it was mandated to inquire into and investigate. The Paranagama Commission was originally mandated to investigate enforced disappearances but its mandate was later expanded to address alleged war crimes. That report was tabled in Parliament on 20 October along with the long-awaited Udulagama report.