

1122. Such unlawful and arbitrary arrest and detention are clearly in violation of Sri Lanka's obligations under international human rights law. Relatives of those arbitrarily detained were often not informed of the date and place of detention of their relatives, causing them anguish and distress, separately breaching Sri Lanka's human rights obligations.

1123. Those abducted or arbitrarily detained as described above were frequently subjected to torture and/or other cruel, inhuman or degrading treatment or punishment and/or sexual violence. These violations were not isolated or sporadic but rather were committed in a widespread manner.

Enforced disappearances

1124. Sri Lanka has one of the highest rates of reported cases of enforced disappearances worldwide, many of which date back decades to earlier periods of conflict and insurgency. During the course of its investigation, OISL reviewed reliable information on hundreds of cases of enforced disappearances that occurred within the period of its mandate in various parts of the country, with particular prevalence in the Northern and Eastern Provinces. Furthermore, the mass detention regime after the end of hostilities also led to enforced disappearances, and relatives continue to be unaware of the whereabouts of the detainees.

1125. Since the first reported cases of enforced disappearance in the 1970's, there have been numerous commissions of inquiry and other mechanisms set up by successive Sri Lankan Governments, with different mandates and different timeframes. Some of these commissions have awarded compensation or made concrete recommendations, however few have been implemented and few meaningful steps have been taken to ensure accountability or prevent the recurrence of such practices.

1126. Enforced disappearances constitute a unique and integrated series of acts that represent the continuing violation of various rights so long as the fate and whereabouts of the victims remain unaccounted for. Since Sri Lankan legislation makes it impossible to draw a pension or receive other means of support in the absence of a death certificate, family members who refused to declare the death of their loved one without proof - are also denied several economic, social and cultural rights, such as the rights to health, education, social security, adequate standard of living and family life.¹²⁰⁶

1127. On the basis of the information available, OISL has reasonable grounds to believe that the Sri Lankan authorities have, in a widespread and systematic manner, deprived a considerable number of victims of their liberty, and then refused to acknowledge the deprivation of liberty or concealed the fate and whereabouts of the disappeared person. This has, in effect, removed these persons from the protection of the law and placed them at serious risk. Family members of the disappeared persons - whether Sinhala, Tamil or Muslim - were also subjected to reprisals, harassment, and detention in response to their search for information. The victims and their relatives have been denied the right to an effective remedy for the violations, including the right to the truth.

1128. There are reasonable grounds to believe that enforced disappearances may have been committed as part of a widespread and systematic attack against the civilian population, given the geographical scope and timeframe in which they were perpetrated, by the same

¹²⁰⁶ In this context, it is important to note that the issuance of death certificates by the Government does not end the ongoing violation unless it is part of a transparent and independent judicial process which conclusively resolves the circumstances of the disappearance, confirming the death of the victim, and returning of the physical remains to the family.

security forces and targeting the same population. In particular, there are reasonable grounds to believe that those who disappeared after handing themselves over to the Army at the end of the conflict were deliberately targeted because they were or were perceived to be affiliated with LTTE forces.

Torture and other forms of cruel, inhuman or degrading treatment

1129. Torture has long been prevalent in Sri Lanka, both in relation to the armed conflict and the regular criminal justice system. OISL documented particularly brutal use of torture by the Sri Lankan security forces, particularly in the immediate aftermath of the armed conflict when former LTTE members and civilians were detained en masse. OISL documented the use of torture following similar patterns by a range of security forces in multiple facilities, including army camps, police stations and “rehabilitation” camps, as well as secret, unidentified locations.

1130. On the basis of the information obtained by OISL, there are reasonable grounds to believe that this torture was committed on a widespread scale. This breaches the absolute prohibition of torture, and Sri Lanka’s international treaty and customary obligations. If established before a court of law, these acts of torture may, depending on the circumstances, amount to crimes against humanity if committed as part of a widespread or systematic attack, and as war crimes if a nexus is established with the armed conflict.

Sexual and gender-based violence

1131. The information gathered by OISL provides reasonable grounds to believe that rape and sexual violence by security forces personnel was widespread against both male and female detainees, particularly in the aftermath of the war. The patterns of sexual violence appear to have been a deliberate means of torture to extract information and to humiliate and punish persons who were presumed to have some link to the LTTE. The denial of sexual violence by public officials, the demeaning of victims and the failure to investigate indicate that such practices were apparently tolerated if not condoned by the authorities.¹²⁰⁷

1132. The alleged victims reported being in unlawful, arbitrary and mostly *incommunicado* detention, in the custody or under the control of the alleged perpetrators. Victims reported being subjected to sexual crimes, including the penetration of a part of their body with a sexual organ, or of the anal or genital opening of the victim with an object or any other part of the body; or being forced to perform sexual acts on the alleged perpetrators.

1133. There are reasonable grounds to believe that sexual crimes were committed by force or under threat of force or coercion, and that this severe physical and mental pain and suffering was inflicted by the security forces for purposes such as obtaining information or

¹²⁰⁷ In its 2011 Concluding observations on the fifth, sixth and seventh periodic reports on Sri Lanka, the United Nations Committee on the Elimination of Discrimination against Women expressed concern that “While noting the State party’s explanation that women were not subjected to violence and discrimination during the last stages of the conflict and in the post conflict phase, the Committee remains deeply concerned about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants. The Committee is particularly concerned about reports of sexual violence allegedly perpetrated also by the armed forces, the police and militant groups.” It called on the authorities inter-alia to “promptly investigate, prosecute and punish” acts of sexual violence. “CEDAW/C/LKA/CO/7, paras. 40 and 41.