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available to the next of kin, with names, place of detention, as well as a record of transfers so that families can have access to such information". The LLRC also recommended the establishment of an Independent Advisory Committee to "monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA." (paras 9.53 to 9.71)

382. Most importantly, the LLRC stated that "the refusal by the Police to record an arrest, detention and transfer or to record complaints of abductions and failure to investigate the same would constitute a criminal offence and steps should be taken to prosecute such wrongdoers" (para 9.55). This LLRC recommendation has also not been implemented.

383. As mentioned above, the criteria for the eventual release of "surrendeers"/detainees from detention were not clear. In 16 cases documented by OISL and also in cases reported by others, release was secured upon payment of a large bribe by a family member of the detainee, often through intermediaries. The EPDP was commonly cited as one such intermediary.³⁰⁵ The acceptance of payments to grant release of detainees appears to have been widespread. This is in direct contradiction with the authorities' claim that the individuals detained constituted a threat to national security.

384. Upon release, detainees were not always issued with documents confirming their release from detention, and therefore, could be called to report regularly to the security forces, face ongoing surveillance, harassment, and fear of re-arrest.³⁰⁶ One victim told OISL that he continued to live in fear after his release from SLA detention in 2010, as he was not given release documents. He was later ordered to report on a weekly basis to CID, until November 2011. He was eventually re-arrested and described being severely tortured.³⁰⁷

385. The Government which took office in January 2015 pledged to review the cases of all those still held under the PTA. The Government appears to be facing challenges in consolidating a comprehensive list of detainees and has stated it was working closely with ICRC on this.

VIII. Enforced Disappearances

Introduction/ Context

386. The phenomenon of enforced disappearance has affected tens of thousands of Sri Lankans for decades during all stages of the armed conflict, as well as during the previous periods of insurgency by the Janatha Vimukthi Peramuna (JVP, People's Liberation Party), with devastating effects on their families, as well as on the wider communities.

387. The scale of enforced disappearances in Sri Lanka has long been exceptional. In its 2014 report, for example, the Working Group on Enforced or Involuntary Disappearances (WGEID) reported a total of 12,536 complaints of enforced disappearances registered over the years, the second highest number of disappearances on the list of the Working Group from any country in the world³⁰⁸, all the more significant given the relatively small

³⁰⁵ WS on file

³⁰⁶ Diplomatic sources on file.

³⁰⁷ WS on file

³⁰⁸ Report of the Working Group on Enforced or Involuntary Disappearances, 4 August 2014, A/HRC/27/49

population of Sri Lanka³⁰⁹. In 2007, the Working Group stated that it transmitted more cases of “disappearances” as urgent appeals to the Sri Lankan Government in 2006 than to any other country in the world³¹⁰.

388. The previous chapter has detailed the many factors which have facilitated enforced disappearances in Sri Lanka. This section looks at enforced disappearances which persisted on a large scale during much of the period of OISL mandate, including targeted disappearances perpetrated in the context of security forces operations, sometimes in conjunction with paramilitary groups. It also documents the cases of a number of individuals who disappeared after identifying themselves to the military as LTTE cadres and associates at the end of the conflict. Even after the period of the OISL mandate, allegations of new cases of enforced disappearances were received.

389. OISL did not review individual cases of persons who had disappeared in the periods before its mandate. However, as enforced disappearances constitute a continuing violation, OISL reviewed information from families who continue to seek truth and justice for their loved ones who disappeared. This section highlights, in particular, the quest of families for information about the whereabouts and fate of their loved ones.

390. Most importantly, this chapter examines the responses of consecutive governments to victims’ claims of enforced disappearances, whether or not the cases occurred within OISL’s mandate period. In spite of thousands who have disappeared, and the numerous national commissions of inquiry set up to look into their cases, the fate of only a small number has been fully clarified, and only few perpetrators held to account. Most of the mechanisms established to address issues related to the disappeared did not provide meaningful responses to clarify the fate of the disappeared and bring to justice those responsible.

391. Not all cases of ‘missing’ persons fall within the definition of enforced disappearances. For example, members of the armed forces who are “missing in action” during the conduct of hostilities are excluded from this definition. Nonetheless, the Government has a duty to make every effort to trace the whereabouts of such persons, to inform the families of any progress in locating the missing, to ensure reunification with their families if appropriate, or to hand over the body of the person, if confirmed as deceased.

392. Cases of abductions by LTTE, including in the context of forced recruitment, are dealt with in Chapter XI.

393. The complex nature of enforced disappearances requires demonstrating multiple elements, including the deprivation of liberty; the involvement of State officials; and the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person, placing the person outside the protection of the law.

394. Nevertheless, OISL gathered consistent information amounting to patterns of enforced disappearances and impunity. In the course of its investigation, it reviewed large amounts of existing information gathered by international and Sri Lankan NGOs and other mechanisms, such as WGEID, which have extensively documented such cases³¹¹. OISL

³⁰⁹ Op.Cit. p31

³¹⁰ A/HRC/10/9, para 366.

³¹¹ Human Rights Watch, *Recurring Nightmare. State Responsibility for “Disappearances” and Abductions in Sri Lanka*, March 2008; SLMM documents; Human Rights Watch, *The Legal Limbo. The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, 2010; Human Rights Watch International Crisis Group, *Complicit in Crime*, 2007; Sri Lanka’s Human Rights Crisis; Amnesty International; Stop Torture, 5 years on: The White Flag Incident 2009-2014, 2014

interviewed members of organisations working directly with relatives of the disappeared, as well as relatives of those who disappeared, and witnesses to arrests, detention or abductions where the victim remains disappeared. For example, a number of former detainees interviewed by OISL said they had seen individuals in army custody who subsequently disappeared. Such information was further corroborated through the review of written submissions sent to OISL.

395. In addition, OISL reviewed unpublished reports of several Sri Lankan commissions of inquiry on disappearances, and copies of complaints lodged with the Sri Lanka Police and other competent national and international bodies.

Government responses to allegations of enforced disappearances

396. Despite the scale of the issue, the Sri Lankan authorities have for the most part downplayed the phenomenon of enforced disappearances and have denied the involvement of the security forces. An exception was President Chandrika Bandaranaike Kumaratunga, who was elected on a pledge to end enforced disappearances in 1994. She took a series of measures to address the issue while in office, although, as will be seen, there were many obstacles which constrained the efforts to bring about accountability.

397. Under the presidency of Mahinda Rajapaksa from November 2005, Government authorities repeatedly denied any responsibility for enforced disappearances. For example, in March 2007, the then Human Rights and Disaster Management Minister, Mahinda Samarasinghe, claimed that the reports about people who disappeared were the result of the “propaganda strategy” by “a ruthless terrorist organization” which tried to “paint a bleak picture internationally to bring pressure on the government so that our resolve will be weakened”³¹². In October 2007, President Rajapaksa himself claimed that among those reported as disappeared under his presidency, “some have gone on their honeymoon without the knowledge of their household”³¹³. He added that “these disappearance lists are all figures. [...] I do not say we have no incidents of disappearances and human rights violations, but I must categorically state that the Government is not involved at all”³¹⁴.

398. Similar statements were made in May 2012 by the then Defence Secretary Gotabaya Rajapaksa, who claimed that many disappeared had left Sri Lanka to go abroad and that the allegations of enforced disappearances are “lies to give a wrong picture of Sri Lanka...a wrong image of Sri Lanka by the rump of the LTTE who is remaining outside and trying to damage the image of Sri Lanka”³¹⁵. In 2014, on the occasion of the consideration of its 5th Periodic Report to the Human Rights Committee under ICCPR, the Government claimed 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.” The Government also categorically rejected allegations of involvement of the military in enforced disappearances.³¹⁶

³¹² “You cannot expect everything to be normal”, *The Nation*, 18 March 2008, <http://www.nation.lk/2007/03/18/inter3.htm>

³¹³ Western Powers Despise My Non-Elitist Leadership in Sri Lanka - Mahinda Rajapaksa, *The Asian Tribune*, 4 October 2007, <http://www.asiantribune.com/node/7650>

³¹⁴ *Ibid.*

³¹⁵ Gotabaya Rajapaksa: Sri Lanka north 'not just for Tamils', *BBC*, 28 May 2012, <http://www.bbc.com/news/world-asia-18207198>

³¹⁶ CCPR/C/LKA: Human Rights Committee, Consideration of Sri Lanka's Periodic Report under ICCPR, 7-8 October 2014 – Information by the Government of Sri Lanka to questions raised by the Human Rights Committee, in addition to earlier written response given by the Government of Sri

399. A few Government officials did, however, acknowledge Government responsibility for disappearances. In early February 2007, the then Foreign Minister Mangala Samaraweera, in a letter to the President stated that “a person is abducted every five hours” in Sri Lanka and that “no matter who does it, as a government we are responsible for it”³¹⁷.

400. In its 2010 interim report to the President, the LLRC, in paragraph 9.47 of its report, also emphasized the urgency of resolving cases of enforced disappearances, calling on the Government to take immediate action. It reported receiving more than 1,000 complaints of enforced disappearances during its hearings, and emphasised that “it is the responsibility of the State to ensure the security and safety of any person who is taken into custody by governmental authorities through surrender or an arrest”.

Patterns of enforced disappearances

401. Enforced disappearances, as evidenced in this section, have been used by consecutive governments to target those perceived as critical of the Government, supportive of opposition movements or involved in armed conflict. For example, according to WGEID reports, NGOs and others, during the JVP insurgencies of 1971 and from 1987-89, thousands of Sri Lankans, mainly Sinhalese males, disappeared after being taken by security forces. In 1996, after Government forces recaptured Jaffna from LTTE control, hundreds of Tamil men disappeared after arrest. Many others, mostly Tamils, perceived as linked to the LTTE have disappeared since that time.

402. The scale of enforced disappearances fluctuated throughout the period covered by OISL investigation. After a drop due in part to the 2002 Ceasefire Agreement, consistent reports from different sources indicate that the number of cases increased dramatically from 2005 onwards. In the report of his visit to Sri Lanka in November 2005, the Special Rapporteur on extrajudicial, summary or arbitrary executions reported that he was “very disturbed” to receive reports “which appeared to indicate a re-emergence of the pattern of enforced and involuntary disappearances that has so wracked Sri Lanka in the past. I flag them [...] as an alarming warning that the escalating security situation could trigger a reversion to abusive practices of the past”³¹⁸. The Special Rapporteur then called on the Government to ensure “that all the necessary safeguards with respect to detention are fully observed”³¹⁹.

403. In its 2006 report, WGEID indicated that it was “gravely concerned at the increase in reported cases of recent enforced disappearances occurring primarily in the north-east of the country in the context of renewed fighting in the region”³²⁰. According to figures published by the Human Rights Commission of Sri Lanka in the middle of 2006, 419 persons had disappeared in the Jaffna peninsula since December 2005.

404. Between 2007 and 2009, the number of enforced disappearances reported to WGEID continued to increase. In 2007, WGEID stated that it was “gravely concerned at the increase in reported cases of recent enforced disappearances in the country”. It added that it was “particularly concerned about new worrying trend concerning recently reported

Lanka to the ‘List of Issues’; Introductory Statement of H.E Mr Ravinatha P. Aryasinha, Ambassador, Permanent Representative of Sri Lanka, 7 October 2014.

³¹⁷ Foreign Minister exposes corruption in Government., The Sunday Leader, 28 January 2007, <http://www.thesundayleader.lk/archive/20070128/news.htm>

³¹⁸ E/CN.4/2006/53/Add.5, 27 March 2006, paragraph 68.

³¹⁹ Ibid.

³²⁰ Report of the Working Group on Enforced or Involuntary Disappearance, 25 January 2007, A/HRC/4/41, paragraph 396.

cases in Colombo, in addition to the cases that have reportedly occurred in Jaffna, which seem to indicate a widespread pattern of disappearances in the country³²¹. According to a list published on 31 October 2007 by three NGOs, which specified it was not exhaustive, there were 540 cases of enforced disappearance from January to August 2007³²².

405. Again, in its 2008 annual report, WGEID stated it was “alarmed” by the large number of cases of enforced disappearances in Sri Lanka³²³, noting it had transmitted 43 cases concerning people who had disappeared between February and October 2008 under its urgent procedure³²⁴. In its report issued in 2012³²⁵, WGEID cited renewed allegations that more than 500 persons had disappeared between January and August 2007, in Jaffna District, and around 100 persons were alleged to have disappeared between 2008 and 2009 in Mannar District.

406. After another surge in allegations of enforced disappearances at the end of the armed conflict in 2009, the numbers of reported cases eventually dropped, although some cases of disappearances continued to be reported after the end of the timeframe covered by OISL’s mandate.

407. Cases of enforced disappearance reviewed by OISL were perpetrated throughout the country, though certain regions were particularly affected. Most of the documented cases during its mandate period occurred in the Northern Province - in the districts of Mannar, Jaffna and Vavuniya, all under strict military control. The second most affected area was the Eastern Province, especially between 2006 and 2008, when the Government forces defeated the LTTE there. Cases of enforced disappearance in Colombo were also documented by OISL, with most of the victims being originally from the North and the East of the country.³²⁶

408. The majority of victims of enforced disappearances which occurred during the period of OISL’s mandate are individuals perceived to have links with the LTTE. Young Tamil males, whether or not they had any links to the LTTE, were particularly vulnerable to enforced disappearances in Government-controlled areas. Others who disappeared in the Government-controlled areas included individuals perceived as critical of the Government, such as human rights defenders, national humanitarian workers and journalists. In a press

³²¹ Report of the Working Group on Enforced or Involuntary Disappearances, 10 January 2008, A/HRC/7/2 paragraph 344.

³²² Civil Monitoring Mission, Free Media Movement and Law & Society Trust, Second submission to the Presidential Commission of Inquiry and public on human rights violations in Sri Lanka: January – August 2007, http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/AFMD_LKA_UPR_S2_2008anx_LSTreportondisappearancesandkillings.pdf

³²³ Report of the Working Group on Enforced or Involuntary Disappearances, 25 February 2009, A/HRC/10/9 paragraph. 366.

³²⁴ Ibid, paragraph 351.

³²⁵ Report of the Working Group on Enforced or Involuntary Disappearances, 2 March 2012, A/HRC/19/58/Rev.1, para 497.

³²⁶ In its final report, the Zonal Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sbaragamuwa Provinces, 1997, noted that “the evidence before the Commission is that the issue of involuntary removal/disappearances in Colombo of persons of Tamil origin should not be subsumed in the phenomenon” of such cases in Southern Sri Lanka”, indicating that the targeting for disappearances of Tamils in Colombo had persisted for many years. (As quoted in *A Legacy to Remember: Sri Lanka’s Commissions of Inquiry 1963-2002*, Ed. Kishali Pinto-Jayawardena, The Law & Society Trust).

release of 11 June 2008, WGEID expressed concern that humanitarian workers were being targeted³²⁷. Some of these cases are documented in the chapter on unlawful killings.

409. An emblematic case, illustrative of the patterns described, is the disappearance of cartoonist Prageeth Ranjan Bandara Eknaligoda, who worked for Lankaenews. An outspoken critic of the Government, he disappeared in Colombo on 24 January 2010 during the presidential election campaign. According to information received by OISL, he was first arrested on 27 August 2009, by unidentified armed men travelling in a white van, and was released the following day, though he continued to receive anonymous telephone calls and believed he was being followed. On 24 January 2010, Mr Eknaligoda left his office in the evening, but never arrived at the place where he was supposed to meet a colleague. His fate and whereabouts have been unknown since then. Lankaenews' offices were searched by unidentified men without producing a warrant four days after Mr Eknaligoda had disappeared.³²⁸

410. The Eknaligoda case has been raised with the Government by the High Commissioner for Human Rights, the Committee against Torture and WGEID, among others. Efforts to find information on his whereabouts are detailed below as well as recent developments in the case.

Disappearances after arrests by security forces

411. Over the years, OHCHR, WGEID and other United Nations bodies, and NGOs have gathered an overwhelming amount of information confirming the direct involvement of the Government, and in particular security forces in enforced disappearances. With the emergence of the Karuna Group in 2004 and the continued paramilitary activities of the EPDP during the mid-2000s (both of which worked closely with security forces), patterns of enforced disappearances became part of the low intensity armed operations between the different groups.

412. According to WGEID reports of 2007, 2008, 2009 and 2010, the Sri Lankan Army, the police (CID, TID, STF) and paramilitary groups were allegedly responsible for the majority of the cases of enforced disappearances. The Sri Lankan Navy, in particular, was responsible for cases of enforced disappearances in Jaffna and Mannar. Allegations, however, also point to joint operations and collusion between the different branches of the security forces (as well as support of paramilitary groups), involving several different entities in different stages of arrest, detention and disappearance.

413. Attributing the acts to specific forces or units as well as identifying individual perpetrators is often challenging, as the security forces, whether police or military, did not always identify themselves and denied having taken persons into custody, and because there were often no witnesses to the arrest. OISL also found that even when they knew the identity of the perpetrators, family members often hesitated to name them for fear of reprisals.

414. While the identity of the perpetrators is not always easily identifiable, the manner in which the arrests were carried out is consistent. Many OISL witnesses described being forced into a white van and driven away by the perpetrators, or witnessing others being taken away in such vans, often without licence plates. Perpetrators would speak Sinhala

³²⁷ Press release of 11 June 2008, "United Nations expert group deplores recent wave of disappearances in Sri Lanka".

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9278&LangID=E>

³²⁸ WS on file

and/or Tamil, wore either plainclothes or uniforms, and sometimes had their faces covered. In a number of cases, the perpetrators verbally identified themselves as CID or TID before taking the victim away. Relatives who were present during the arrest or abduction of those who subsequently disappeared were often told that the victims were taken for questioning. However, the perpetrators systematically failed to provide a formal arrest warrant or any information about where they were taking the victim. In such cases, the police or the security armed forces later denied that the person was under their custody.

415. An illustrative case, which occurred in 2008, is that of a man arrested at his home by five men dressed in civilian clothes, stating they were police and CID officers from Trincomalee³²⁹. The officers allegedly informed the victim's family that he was being taken for questioning and that they should go to the police station in the morning. The victim passed through a Navy checkpoint following his arrest, but the Navy officers provided no information to the family confirming this. The police also denied his arrest.

416. In other cases, uniformed army personnel were more easily identifiable even though the army subsequently denied involvement. In one case reported to OISL that occurred in 2006, a man was arrested late at night at his home in Jaffna by a group of armed individuals, some in army uniform, some in civilian clothes.³³⁰ He was accused of assisting the LTTE. The alleged perpetrators spoke Sinhala and broken Tamil. Witnesses reportedly saw the man being taken to a nearby SLA camp. Yet the following day, the Army denied any involvement in taking the victim³³¹. In spite of complaints submitted to police and other organizations, there has been no information as to the victim's whereabouts.

417. Factors indicating the involvement of Government security forces also include the scale and nature of the operations leading to disappearances, and the fact that the perpetrators were able to operate with impunity in Government-controlled areas. This is particularly the case where incidents occurred close to SLA or SLN checkpoints and camps, including after curfew. A typical case is that of a young man who was seen being abducted in December 2007 by unidentified individuals driving a white van without licence plates coming from the direction of the SLA camp. The van was then seen driving back towards the army camp. Yet, the SLA denied having any knowledge of the abduction of that person.³³²

418. Transcripts of representations to the LLRC made by witnesses at public sittings in Trincomalee highlight a number of cases of alleged abductions perpetrated mostly in 2007 and 2008 by individuals who had identified themselves as Navy personnel, often indicating the victim was being taken for questioning. In a number of cases, the witnesses were informed that their relative would be released if they paid a bribe but, despite payment, they were not released.³³³

419. In 2005, a victim had to pass by a Navy base while on his way to visit relatives in a village in Mannar district. Witnesses had observed navy patrols and guards along the road that evening. When the victim did not return home that evening, the police were alerted; they reportedly suspected navy personnel to be the perpetrators. According to OISL

³²⁹ WS on file.

³³⁰ WS on file

³³¹ WS on file

³³² WS on file

³³³ Proceedings of public sittings of the Commission of Inquiry on Lessons Learnt and Reconciliation, District Secretariat Trincomalee, 3 December 2010. These give a number of accounts of all the steps the witnesses took in each case to try to find out the whereabouts of their family members, and the obstacles they met which are consistent with many others reviewed by OISL.

information, three months after the disappearance, the police had not actively pursued any investigation but were waiting passively for witnesses to come forward.³³⁴

420. In another case, in 2006, a group of eight men from a village in the north were victims of enforced disappearance from a temple, where the men were staying overnight at the time of a festival. Witnesses indicated that they believe the SLA was responsible for their disappearance.³³⁵ Three SLA camps were located in the area of the temple. According to several sources, there had been some military presence during the festival. On the night the men disappeared, witnesses saw military vehicles moving about in the area and heard gunshots being fired from the direction of the temple.³³⁶

421. The following morning, several bullets were found on the ground, as well as some of the victims' clothes and ID cards. Military vehicles were seen driving away that morning. Villagers went to a nearby SLA camp, but the security guards denied having arrested anyone. The villagers filed a complaint with the national Human Rights Commission in Jaffna and the local police. The police said, at the time, that they were investigating the case and had no further information. The day after the alleged disappearances, the SLA searched houses in the village. WGEID sent the case to the Government of Sri Lanka under its urgent action procedure, which responded that investigations were being carried out³³⁷.

422. Witnesses in some cases told OISL that the victims disappeared in Government-controlled areas during curfew hours or after security forces conducted one of the regular night-time cordon and search operations described in the previous chapter.³³⁸ Following one cordon and search operation in Vavuniya in August 2008, 12 persons were initially arrested and six released; as of October 2008, the whereabouts of the other six remain unknown. OISL was also told that, at the time, in August 2008, the security forces made some changes to the methods of detaining individuals. Instead of individuals being detained during the cordon and search operations, they were arrested the following night by officials travelling in white vans. In September 2008, four persons were arrested and disappeared the night after a search operation in Vavuniya.³³⁹

423. In some such cases, victims were seen being taken to military camps, or received visits, were questioned, threatened or harassed by security forces before they disappeared. OISL received information about the case of a man who, in mid-May 2009, went to work in an Eastern town and never returned. The day before his disappearance, the SLA had carried out a search operation and, during the week preceding the disappearance, an SLA captain had come to his house on three separate occasions to inquire about him. The victim was allegedly seen being questioned by two men in SLA uniform. There has been no information about his fate or whereabouts since then, despite efforts to trace him.³⁴⁰

Enforced disappearances involving paramilitary groups

424. Enforced disappearances were also carried out by security forces operating in collusion with paramilitary groups and vice-versa, particularly from 2004 onwards. Indeed, the resurgence of a pattern of abductions and arbitrary deprivation of liberty, sometimes resulting in enforced disappearance, also mirrors the emergence of the Karuna group

³³⁴ SLMM documentation.

³³⁵ WS on file

³³⁶ SLMM documentation.

³³⁷ A/HRC/4/41, paras 382 and 384

³³⁸ Chapter VII Violations related to deprivation of liberty.

³³⁹ Name of village on file.

³⁴⁰ WS on file

following its split from LTTE in 2004, particularly in the East.³⁴¹ For example, in 2006, as the hostilities intensified, at least 167 adults were allegedly abducted by elements of the Karuna group in Batticaloa District.

425. Abductions of those suspected of having links with the LTTE in Ampara, Batticaloa and Trincomalee were sometimes carried out jointly by the security forces and the Karuna Group.³⁴² By October 2006, according to the information available to OISL, there was growing collaboration between the Karuna Group, the STF and the SLA in Batticaloa and Ampara. Numerous cases in Batticaloa from 2005 and 2006 also point to persistent cases of the Karuna Group using white vans to abduct people - including children - from public places in front of SLA camps or checkpoints, and later releasing them with the inferred purpose of warning and demonstrating the extent to which they were able to operate in Government-controlled areas.³⁴³ The presence of several Karuna Group camps in the vicinity of SLA camps and in a few instances within SLA camps, for instance close by the headquarters of the Sri Lanka Army 23rd Division in Welikanda, illustrate that the SLA was fully aware of their presence, and cases of abductions perpetrated by the Karuna Group, often carried out during daylight hours,³⁴⁴ could not easily have gone unnoticed by the SLA.

426. In one case documented in 2006, individuals believed to be from the Karuna Group were reportedly seen abducting young people in the vicinity of an SLA camp. The SLA who were present did not intervene to prevent the incident.³⁴⁵

427. In another case, SLA soldiers took a group of young men from a street in an eastern village on a morning in October 2006 and brought them to a nearby army camp. According to the available information, the soldiers made a phone call and shortly afterwards Karuna cadres arrived at the camp, took the young men's ID cards, and instructed them to report to the local TMVP office that afternoon. In several cases, victims described to international observers that while abducted by the Karuna Group and transported in a white van, they would go through a number of SLA checkpoints. They observed that the van stopped at each checkpoint, and that the Karuna Group cadres would talk to the soldiers and be allowed to pass.³⁴⁶

428. In October 2006, the Special Rapporteur on extrajudicial executions and international observers found increasingly strong indications of collaboration between the Karuna Group and the security forces, particularly the Special Task Force (STF) of the police and in some cases, between the Military Intelligence and the Karuna Group.³⁴⁷ According to reports, the victims of enforced disappearances abducted by the Karuna Group were often temporarily held in one of the TMVP offices before being handed over to the STF. In one case from 2006, a man was reportedly arrested by the STF in the middle of Batticaloa, was later handed over to Military Intelligence, who then handed him over to the Karuna group. The STF reportedly claimed the victim had been released despite witness statements to the contrary.³⁴⁸

³⁴¹ WS on file; See also Human Rights Watch, *Complicit in Crime – State Collusion in Abductions and Child Recruitment by the Karuna Group*, January 2007.

³⁴² WS on file

³⁴³ Op.cit.

³⁴⁴ WS on file

³⁴⁵ SLMM documentation.

³⁴⁶ SLMM documentation.

³⁴⁷ E/CN.4/2006/53/Add.5 27, March 2006.

³⁴⁸ SLMM documentation.

Enforced disappearances at the end of the armed conflict

429. In spite of the Government's persistent denials³⁴⁹, a body of credible information has emerged supporting allegations that a significant number of individuals, principally LTTE fighters who had laid down their arms, LTTE non-military cadres, their associates and family members, disappeared on 18 May 2009, after they had crossed the Vadduvakal bridge "surrendering"³⁵⁰ to the SLA.³⁵¹

430. Some of these cases were reported to WGEID and reference to them is included in its annual reports of 2012 and 2014.³⁵² OISL received other testimonies, including submissions from people who allegedly witnessed the surrender of former LTTE cadres or civilians who have not been seen since³⁵³. The LLRC itself registered a total of 53 LTTE cadres who surrendered during the final days of the war and were alleged to have disappeared at the time of its report.³⁵⁴ In May 2015, the International Truth and Justice Project Sri Lanka published a list of 110 names of individuals seen by eyewitnesses "surrendering" to the SLA on or around 18th May 2009³⁵⁵.

431. Witnesses told OISL that after the initial screening process, some of their family members were approached within a fenced holding area at Mullaitivu by soldiers or Tamil informants who led them away. OISL was also told that those individuals who acknowledged their link to LTTE were moved into separate lines, away from their families, before being taken away.

432. Witnesses told OISL that the security forces gave them no information as to where they themselves or those separated from them would be taken. Witnesses (wives, mothers, grandparents) saw their loved ones being taken away, including five children between the ages of two and 10.

433. The most widely documented case is the surrender of the group led by a Catholic priest, Father Francis Joseph on 18 May. That morning, a number of witnesses saw Father Francis in the holding area, together with³⁵⁶ a group of LTTE fighters who were *hors de combat* and non-military cadres³⁵⁷ that had identified themselves to the SLA at Vadduvakal.³⁵⁸

³⁴⁹ In January 2013, the then Defence Secretary, Gotabaya Rajapaksa, stated that none of the LTTE cadres who had surrendered to the security forces at the end of the war went missing. All of them, he said, underwent a proper rehabilitation programme and were reintegrated into society; Sri Lanka Brief, No LTTE surrendee went missing – Gotabaya Rajapaksa, 25 January 2013, <http://srilankabrief.blogspot.ch/2013/01/no-ltte-surrendee-went-missing-gotabaya.html>

³⁵⁰ The term « surrender » is only applicable to members of an armed group that hand themselves over. It has been used here even though it is unclear who the LTTE cadres were, whether military or political.

³⁵¹ These cases may also be linked to the alleged extrajudicial executions described in the previous chapter.

³⁵² WGEID Annual report 2012, A/HRC/19/58/Rev.1 pages 111-113.

³⁵³ WS on file. OISL also received a large number of submissions.

³⁵⁴ LLRC Report, para. 1.49: According to the Commissioner General of Rehabilitation, the Commission understands that there were 11,954 former LTTE combatants undergoing rehabilitation after they surrendered or who were otherwise taken into custody.

³⁵⁵ International Truth & Justice Project Sri Lanka, Sri Lanka : Disappearances in Custody Six Years Ago Today, 18 May 2015, <http://tamilsforum.co.uk/wp-content/uploads/2015/05/Statement-18-May-2015-ITJP-SL-Disappearances.pdf>

³⁵⁶ WS on file

³⁵⁷ WS on file

³⁵⁸ WS on file

434. He was seen facilitating the “surrender” of LTTE cadres directly with security forces members, one of whom was believed to be a senior-ranking security official with “a lot of security around him and a lot of badges on him”.

435. Shortly afterwards, Father Francis and the group were seen by witnesses being led by the security forces to the road to the left of a first aid centre by the screening post at Mullaitivu and down the road to the south.³⁵⁹ Some witnesses saw Father Francis and the group of LTTE cadres boarding buses east of the last holding area.³⁶⁰ Father Francis and other members of the group have not been seen or heard from since.

436. Fourteen habeas corpus petitions have since been filed on behalf of 22 individuals (including five children), 13 in the Vavunya High Court (five on 20 March 2013, seven on 22 August 2013, one on 23 May 2014) and one in Mannar High Court in June 2015. The 22 are: Father Frances Joseph; Muralitharan Nadesu, his wife Muralitharan Krishnakumary and two young children; Mahalingam Sinnathamby (alias Illamparithi), his wife Mahalingam Sivanjni and their three children aged 10, eight and three at the time; Sinnathurai Sasitharan (Elilan); Selliah Vishwanathan; Ponnampalam Kanthasamy; Uruthirammoorthy Krishnamkumar; Kandasamy Thushisankar; Thiyagajah Thinesh; Nadesamoorthy Vishnukumar; Mahendran Murugathas; Thangabalasingam Vijayabaskar; Sivagnanam Gobalaratnam and his wife Sivalingam Pathmalosini, Kalimuththu Sajeewan; and V.Balakumaran.

437. In all but two cases, the individuals were among those last seen at Mullaitivu holding area on 18 May. One individual was seen being taken away at Omanthai on 18 May, another being taken away from the Mullaitivu holding area on a tractor two days earlier because he was injured. All of the petitions state that the disappeared were last seen in the custody of the 58th Division of the Sri Lankan Army.

438. In response to the petitions, the SLA stated that it had not arrested or detained the individuals. In some cases, it responded it had “acted lawfully and ensured the safety and welfare of the civilians who came to the areas liberated by the Army.” In other cases, it replied that “at all times, Sri Lankan Armed Forces followed the applicable international norms governing warfare”. It also claimed that many of those missing either died during confrontations with the military or fled the country illegally and were living in western countries.

439. In its report, the LLRC expressed its “grave concern” about the “number of representations concerning alleged disappearances of LTTE cadres who had surrendered to or been arrested by the Sri Lanka Army particularly in the final days”. “Family members of these cadres...stated that when they, along with their husbands had reported at Army points, they had been told that their husbands were required for investigation and were being detained, and the family members were asked to proceed to the IDP camps. In some other cases, the spouses had seen their husbands surrendering to the Sri Lanka Army. The Commission also heard instances of families surrendering to the Army. The consistent theme that emerges from these representations is that the last they had seen of their husbands was their surrendering to the custody of the Sri Lanka Army, and had not heard or seen them since then.”

440. The LLRC emphasized “the clear duty of the State to conduct necessary investigations into such specific allegations, and where such investigations produce evidence of any unlawful act on the part of individual members of the Army, to prosecute

³⁵⁹ WS on file

³⁶⁰ WS on file

and punish the wrongdoers.” It therefore noted that “the launching of a full investigation into these incidents is an imperative.”³⁶¹

441. The Government is not known to have conducted any credible, thorough and independent investigation into these cases to clarify the fate and whereabouts of those taken away. In some of these cases, the Government claimed that the victims were killed in combat, in spite of witnesses having seen them taken into custody.

442. It is not clear how many individuals disappeared at the end of the armed conflict. The lack of transparency and clear procedures for registering those coming out of the conflict areas and separating them according to categories, notably LTTE cadres and civilians, is an additional factor, which facilitated disappearances. The initial screening and subsequent detentions were not consistently monitored independently. As a result, the figures remain unclear and a precise determination cannot be made whether others who were arrested during the last stage of the conflict remain unaccounted for.

443. In light of the information available to OISL, the fate of a significant number of LTTE cadres who surrendered at the end of the conflict, remains unknown, and a number of witnesses have testified to the fact that their loved ones remain disappeared. OISL therefore believes that an independent review of the lists of individuals registered as “surrendeers” is necessary, clarifying the fate of each one of them.

The quest for truth

444. Victims of enforced disappearance are not only the disappeared themselves, but also their family members. Enforced disappearances cause “anguish and sorrow”³⁶² to the families of those disappeared and their suffering may amount to torture or cruel, inhuman or degrading treatment.³⁶³ Under international law, family members have the right to truth³⁶⁴ and the State has an obligation to demonstrate that all feasible efforts have been made to clarify the fate or the whereabouts of the disappeared person, the circumstances of the disappearance, and the identity of the perpetrators.³⁶⁵ The restriction of the right to truth only adds to, and prolongs, the continuous suffering inflicted upon the relatives.³⁶⁶ A disappearance is considered to be a continuing violation so long as the State continues to conceal the fate and whereabouts of the disappeared person³⁶⁷.

445. In its report, the LLRC drew particular attention to the impact of disappearances on women: “The issues pertaining to missing persons, abductions, arbitrary detentions, long and indefinite detentions and disappearances have a direct bearing on women as the victims are most often their husbands, sons, fathers and brothers etc., who play a vital role in a traditional household as breadwinners as well as providers of security. As such these issues

³⁶¹ LLRC report, paras 4.318-4.319.

³⁶² See 5th pre-ambular paragraph of the Declaration.

³⁶³ Article 1, para. 2 of the Declaration : « Any act of enforced disappearance(...) constitutes a violation of the rules of international law guaranteeing, (...) the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.”

³⁶⁴ Article 32 of the Protocol I to the Geneva Convention; Article 24 of the 2006 International Convention on the Protection of All Persons from Enforced Disappearances; Article 13 of the Declaration of All Persons from Enforced Disappearance; WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances.

³⁶⁵ WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances.

³⁶⁶ Ibid.

³⁶⁷ WGEID, General Comment on article 17 of the Declaration on the Protection of All Persons from Enforced Disappearances, E/CN.4/2001/68, paragraph 25

need to be addressed as a matter of priority, recognizing that these women have a right to know the whereabouts of their loved ones, have the right to the truth and legal remedies as equal citizens of this country”.³⁶⁸

446. Witnesses described to OISL the many steps they had taken to find out what happened to their family members. Families of disappeared persons have filed complaints with multiple organizations, including the police, the SLA, the national Human Rights Commission and various domestic commissions of inquiry, often only to receive a letter to acknowledge the receipt of the complaint and no further information³⁶⁹, or denials that the person had been detained.

447. In the majority of cases received by the OISL, witnesses stated that when they tried to submit a complaint to the local police station, the police would record the statement about the disappeared person(s) in Sinhala, and request family members to sign statements, which they usually did without however understanding the content of the document³⁷⁰. In none of these cases were their statements followed up³⁷¹.

448. Families were sent from one place to another, without receiving any information regarding the fate or the whereabouts of their missing relatives. This made the search psychologically as well as financially onerous. One witness stated that she had to pay an interpreter when she visited different Government offices. When family members had little or no information on the circumstances of the disappearance or the alleged perpetrators, they usually tried to search in the various IDP camps where thousands of displaced Tamils were living.³⁷²

449. Few families of the disappeared have filed writs of habeas corpus to try to obtain information. Applications for such writs have not generally been an effective remedy, due to various factors, such as lack of investigation, delays, disregard for witness protection, and the court’s discretionary dismissal of cases based on the lack of evidence. For example, the habeas corpus petitions filed with the Vavuniya High Court in 2013 regarding the disappearances of the group seen surrendering in May 2009, including Father Francis, remain pending to this day.

450. The LLRC, in response to the many complaints of disappearances it received, recommended the creation of a central database of detainees and places of detention that families and their lawyers would be able to access. WGEID made the same recommendation many years earlier to no avail. In its periodic reports to the United Nations Committee against Torture and Human Rights Committee, the Government noted the existence of such databases. However, OISL has not been able to confirm the veracity of this information, nor has it been given access to these databases. The fact that the new Government has faced difficulties consolidating a list of those currently in detention suggests that this information has not been previously recorded in any systematic and transparent way.

451. As already indicated, the lack of transparency concerning places of detention, particularly after mass detentions during the last days of the war and in the years after the

³⁶⁸ LLRC Report, Summary of principle observations and recommendations.

³⁶⁹ Human Rights Watch, *Recurring Nightmare. State Responsibility for “Disappearances” and Abductions in Sri Lanka*, 2008

³⁷⁰ See also the Summary of the Report of the Committee on Disappearances of the National Human Rights Commission of Sri Lanka, 28 October 2003, p. 8.

³⁷¹ WS on file. HRW, *Recurring Nightmare...Op.cit.*

³⁷² WS on file

end of the conflict, and the lack of a central registry of detainees, has facilitated enforced disappearances, and made it impossible for families to trace their loved ones.

452. In some cases, relatives desperate for news of their loved ones have been contacted by unidentified individuals who claimed that their relative was alive and would ask for money to reveal the location. However, once payment was made, no further information was made available. One witness, whose daughter disappeared in 2009 in the Vanni stated that he had received an anonymous call saying that she was in a camp, asking for money to show her to him. The interviewee was asked for more money with the promise that he would be allowed to see his daughter and talk to her. The witness paid a large amount of money but never saw his daughter³⁷³.

453. The case of Prageeth Ekinaligoda illustrates the situation of many searching for their loved ones. Police initially refused to open a case when he failed to return home. An investigation was launched by the Mirihana police station on 27 January 2010, following an order from the Inspector General of Police. The case was handed over to the Colombo Criminal Investigation Division on 30 January 2010, until recently without any result.³⁷⁴

454. On 19 February 2010, his wife, Sandya Eknaligoda also filed a habeas corpus petition in the Colombo Appeals Court, requesting that the police launch a thorough investigation immediately. However, the police have repeatedly called for postponements of the case to give them more time to conduct an investigation. For years, nothing was produced by the police in the courts. The case has been repeatedly postponed, frequently because the magistrate was on leave. A hearing was scheduled for 6 February 2015, but postponed until 26 March, as the judge was on leave. Eknaligoda's case was also dealt by WGEID under its urgent action procedure³⁷⁵.

455. On 9 November 2011, the Attorney-General at that time, Mr Mohan Pieris, told the United Nations Committee Against Torture that "with regard to the journalist Eknaligoda... we have actually investigated that matter very closely. Our current information is... that Mr Eknaligoda...has taken refuge in a foreign country..."³⁷⁶ This statement was confirmed in writing to the Committee and Ms. Eknaligoda presented it to the court in Colombo which was dealing with the case. The Attorney-General subsequently had to retract the allegations he made before the CAT.

456. Since then, there have been important developments, which are described in OHCHR's report to the Human Rights Council³⁷⁷. In August 2015, just before the Parliamentary elections in Sri Lanka, police announced they had arrested several military personnel, including two Lieutenant Colonels, and two former LTTE cadres in relation to the disappearance of journalist and cartoonist Prageeth Eknaligoda.³⁷⁸ Unconfirmed media reports alleged that the investigation has so far revealed that Eknaligoda was taken to an army camp in Girithale in North Central province following his abduction on 24 January 2010.³⁷⁹ While this is an important breakthrough, OISL believes that this investigation

³⁷³ Source on record.

³⁷⁴ WS on file

³⁷⁵ Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/16/48, 26 January 2011

³⁷⁶ Letter provided by the Chairperson of the Committee Against Torture quoting Mohan Pieris, 11 May 2012, which was submitted to the court dealing with the case in Colombo (date unknown). See also the Summary Records; see also CAT/C/SR.1033, 22 May 2012

³⁷⁷ A/HRC/30/6/

³⁷⁸ <http://www.dailynews.lk/?q=police-legal/cid-arrests-four-army-officers>,
<http://www.dailynews.lk/?q=local/sgt-major-confesses-grilling-ekneligoda>

³⁷⁹ <http://www.dailynews.lk/?q=local/sgt-major-confesses-grilling-ekneligoda>

must not only clarify the circumstances of the arrest and disappearance but, as with all other cases, the cover up and chain of command responsibility.

Issuance of death certificates

457. According to the 2010 amendment to the Registration of Deaths (Temporary Provisions) Act,³⁸⁰ families are allowed to register as deceased any person reported missing for over a year “in the course of the civil disturbances that have taken place in Sri Lanka due to terrorist or subversive activities or civil commotion”.

458. While the Act allows relatives of the disappeared to apply for a death certificate, this does not lead to any recognition that the victim disappeared following unlawful and arbitrary arrest by the security forces, nor does it clarify the fate of the loved ones. Furthermore, witnesses have expressed concern that acceptance of a death certificate may be used to stall any investigations into the person’s disappearance.

459. OISL received testimonies from family members who were offered, and sometimes forced, to accept death certificates in order to receive monetary compensation. In cases documented by OISL, this practice occurred when relatives lodged complaints with the police, or during inquiries by the CID, as well as in the context of the hearings held by the Presidential Commission to Investigate Missing Persons³⁸¹. As a general principle of human rights law, no victim of enforced disappearance shall be presumed dead over the objections of the family³⁸².

460. Many families have accepted death certificates for economic reasons. These certificates are the only legal documents that allows for the transfer of property, re-marriage, compensation applications and access to social welfare and pensions. In some cases in the past, it has also enabled access to compensation.³⁸³

461. However, OISL received many testimonies of relatives who refused to accept a death certificate of their loved ones without proof.³⁸⁴ One person whose daughter was last seen at Omanthai checkpoint refused a death certificate, on the grounds that she could not accept it without evidence of her daughter’s death and without being able to bury her.³⁸⁵

462. The issuance of death certificates and compensation does not, however, remove the Government’s obligation to take measures to provide the truth about the fate and

³⁸⁰ Parliament of the Democratic Socialist Republic of Sri Lanka, Registration of deaths (temporary provisions) act, no. 19 of 2010, [http://documents.gov.lk/Acts/2010/Registration%20of%20Death%20Act%20No.%2019%";](http://documents.gov.lk/Acts/2010/Registration%20of%20Death%20Act%20No.%2019%) In 1995, the Government had enacted the Registration of Deaths (Temporary Provisions) Act No. 2 in order to simplify and expedite the process of issuing death certificates in respect of persons who are presumed dead. The procedure was further simplified by the Registration of Deaths (Temporary Provisions) Act No. 58, enacted in 1998.

³⁸¹ Source on file.

³⁸² WGEID, General Comment on article 19 (the right to compensation), E/CN.4/1998/43, para. 74; see also A/HRC/22/45, para.50

³⁸³ Between 1995 and 1999, some 15,000 death certificates were issued to families of the disappeared and compensation paid to thousands of families. This followed recommendations to simplify the process of obtaining death certificates made by commissions of inquiry that had been set up under the Government of Chandrika Bandaraikē Kumarānga (see below).

³⁸⁴ WS on file

³⁸⁵ Source on file

whereabouts of victims, and the obligation to return the remains to the family so that they can dispose of them according to their own tradition, religion or culture.³⁸⁶

463. OISL recommends the enactment of legislation clearly indicating that the acceptance of a death certificate where a person continues to be disappeared is not a bar to seeking justice. Relatives of the disappeared who do not accept the death certificates are continuing to face economic hardship as a result.

Reprisals against relatives of disappeared and human rights defenders working on enforced disappearances

464. Relatives of disappeared persons have been subjected to often persistent threats, restrictions and harassment, designed to prevent them from seeking truth, justice and accountability. Over the years, it has become a regular practice for the police (primarily CID, TID, STF) and units allegedly operated by SLA to monitor the movements of people who have lodged complaints or campaigned for information about the whereabouts of their loved ones. In many of the cases documented by OISL, relatives of the disappeared have been visited and interrogated by the security forces at their house, and/or called in for inquiry, and threatened. In particular, as the majority of disappeared in Sri Lanka are men, women put themselves at risk in seeking to obtain truth and justice for cases of enforced disappearance.³⁸⁷

465. Several women whose husbands disappeared after arrest – in the 1990s, in 2006, 2009 and 2010 – described to OISL how they were threatened and harassed, and in one case abducted in a white van and beaten because of their persistent inquiries into what happened to their loved ones. In some cases, the SLA were reportedly responsible, in others CID.³⁸⁸

466. Family members who sought accountability using international mechanisms also faced harassment from the Sri Lankan authorities. Sandya Eknaligoda was threatened and harassed by several supporters of the delegation of the Government of Sri Lanka after she spoke during the 19th session of the United Nations Human Rights Council in Geneva. They accused her of receiving money from foreign organizations and of betraying the country³⁸⁹. A day after returning from Geneva, Mrs. Eknaligoda reportedly attended a hearing at the High Court in relation to her husband's disappearance, during which the Attorney General's representative questioned her for more than one hour on matters related to her participation in the Human Rights Council, rather than on the circumstances of her husband's the disappearance.

³⁸⁶ WGEID, General comment on the right of truth.. par. 6: "The right to know the truth about the fate and the whereabouts includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture. The remains of the person should be clearly and indisputably identified, including through DNA analysis. The State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation."

³⁸⁷ Working Group on Enforced or Involuntary Disappearances, General comment on women affected by enforced disappearances, A/HRC/WGEID/98/2, Preamble

³⁸⁸ WS on file

³⁸⁹ See Asian Human Rights Commission, Sri Lanka: Sandya Eknaligoda harassed, 2012, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-092-2012>

467. In its last annual report, in 2014, WGEID noted with concern that it had transmitted four urgent allegation letters during the reporting period concerning the alleged intimidation of and reprisals against human rights defenders working on the issue of enforced disappearances.³⁹⁰

Justice and accountability for enforced disappearances

The role of the Human Rights Commission of Sri Lanka in investigating enforced disappearances

468. Established in 1996, the Human Rights Commission of Sri Lanka must be notified of any detention including those under the Emergency Regulations or the Prevention of Terrorism Act and it is entitled to visit any place of detention.³⁹¹

469. Until 2006, the Commission visited many places of detention to follow up on cases of arrest. In 2002, a Committee on Disappearances in the Jaffna Region was appointed by the Commission to look into disappearances from 1990 to 1998, and to identify cases of complainants with special needs for relief and support. The report of the Committee on Disappearances, finalised in October 2003, included lists of disappeared as well as of the individuals alleged to be responsible. However, there is little information to suggest that any follow-up action was taken.³⁹²

470. In 2005, the Commission, together with partners, began setting up a National Database on Disappearances to compile information on all cases of enforced disappearances that it and other sources had collected. The Commission had also received for review more than 16,000 complaints from the All Island Commission, one of the commissions of inquiry established by the Government in 1998 to investigate cases of enforced disappearances (see below).

471. On 1 January 2006, the Commission appointed a Special Rapporteur to investigate conflict-related human rights violations. This included an emblematic case of the disappearance of five staff members of the Tamil Rehabilitation Organisation (TRO) and their driver in January 2006. The investigation confirmed that they were abducted by armed masked men on 29 January 2006, on their way from Batticaloa to Kilinochchi. They remain disappeared to this day, as do two other TRO members abducted the following day, whose cases the Special Rapporteur was reportedly unable to investigate.³⁹³

472. After a change of leadership in 2006, however, the Commission did not pursue its work on enforced disappearances in any meaningful way.³⁹⁴ One of the first measures the new Chair, Justice Ramanathan, took was to order the staff to cease work on the database of the disappeared³⁹⁵. In a response to WGEID dated 11 August 2006, concerning allegations that the Commission had stopped investigating disappearance cases at the request of the Government, the latter stated that the Commission was an independent body and that “the

³⁹⁰ A/HRC/24/49, para 94

³⁹¹ Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained available at < http://www.defence.lk/new.asp?fname=20070425_02>

³⁹² During the period covered by the commission, LTTE was in control of Jaffna from 1990-1995 and the Government for the rest of the period. According to the report, 256 of the investigated cases were Tamils, most of them disappeared at the hands of the Army, and 25 Muslims taken by the LTTE (as reported in *A Legacy to Remember*, Op cit.)

³⁹³ Report of the Special Rapporteur on Conflict-Related Human Rights Violations, 2006.

³⁹⁴ International Crisis Group, *Sri Lanka's Human Rights Crisis*, Asia Report, no. 135, June 14, 2007, p. 19; Human Rights Watch, *Recurring Nightmare*... p. 103-107.

³⁹⁵ Source on record.

Government can only transmit to the Human Rights Commission of Sri Lanka any representation forwarded, with the request for appropriate action.”³⁹⁶

473. The decision to stop working on disappearance cases, and the manner in which the Chair and other members were appointed, led to the October 2007 decision of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights to downgrade the Commission to its current “B-status”, citing that “it is not clear whether the actual practice of the Commission remains balanced, objective and non-political, particularly with regard to the discontinuation of follow-up to 2000 cases of disappearances in July 2006”³⁹⁷.

474. A former staff member of the Commission informed OISL that in the 1990s, when he first started working with the Commission, if someone was taken by the police or the army he was able to go immediately to the police station or army camp to make enquiries and, if appropriate, to intervene to obtain the release of the detainee. He stated that after the change of leadership of the Commission in 2006 and under the Rajapaksa Government, this was not possible any more.³⁹⁸ The Commission officials encountered difficulties in following up on complaints made by hundreds of civilians because they feared repercussions for raising cases in a heavily militarized environment.³⁹⁹

475. OISL received testimonies from several reliable sources who claimed that when a complaint about an arrest and detention was received by the Commission, all the details were sent to the persons in charge of the investigation within the institution allegedly responsible. The institutions did not usually provide any response, or they would often deny any knowledge of the person allegedly arrested and detained, and there would be no further follow up.⁴⁰⁰

Commissions of inquiry to investigate enforced disappearances

476. Between 1991 and 2013, different Governments established a significant number of commissions to look into enforced disappearances, with different mandates, timeframes and personnel. Many were criticised for their lack of independence and transparency, and their recommendations, when made publicly available, were never followed up in a systematic manner. Some of the commissions drew up lists of alleged perpetrators. However, for the most part, only in a small number of cases did the investigations lead to convictions of those responsible.

477. Some of these commissions predate the period covered by OISL’s mandate. However, taking into account the importance of their findings and the fact that their work concerned individuals who continue to be disappeared, and because the results of their investigations fed into judicial mechanisms active after 2002, OISL considered it was important to refer to their work. Moreover, the information they gathered continues to be of relevance today.

³⁹⁶ A/HRC/4/41, par. 382-398.

³⁹⁷ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Report and Recommendations of the Sub-Committee on Accreditation, Geneva 22 to 26 October 2007. 5.3

³⁹⁸ WS on file

³⁹⁹ PEARL submission to the Sri Lanka first Sri Lanka UPR review, 2008

⁴⁰⁰ WS on file

Presidential Commissions (1991, 1992, 1993)

478. The first Presidential Commission to inquire into disappearances was appointed by President Ranasinghe Premadasa, on 11 January 1991.⁴⁰¹ Its mandate was to inquire into allegations “that persons are being involuntarily removed from their places of residence by persons unknown” after 11 January 1991.⁴⁰² It reportedly concluded investigations into some 140 cases by the time it ceased to function in 1993.⁴⁰³

479. Two other Commissions were subsequently created, in 1992 and 1993. The warrants of these commissions were reportedly revoked in 1993 by President D.B. Wijetunga who, on 23 August 1993, appointed another Commission of Inquiry into Involuntary Removals of Persons.⁴⁰⁴ Its mandate was to look into the “credibility” of complaints⁴⁰⁵ of disappearances, was limited to the period 1991-1993, failing to cover the period from 1987 to 1990, during which large numbers of enforced disappearances linked to the JVP uprising allegedly occurred.⁴⁰⁶ The final reports and recommendations of these commissions have never been made public.

The Zonal Commissions (1994) and the All Island Commission (1998)

480. Three Zonal Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons were set up by President Chandrika Bandaranaike Kumaratunga in 1994. Each Commission was mandated to cover a specific geographical area: Central, North Western, North Central and Uva Provinces; Northern and Eastern Provinces; Western, Southern and the Sabaragamuwa Provinces. The three Commissions were mandated to inquire, *inter alia*, into “whether any persons have been involuntarily removed or have disappeared from their places of residence after January 1, 1988”.⁴⁰⁷ The timeframe covered by the Commissions again excluded many disappearance cases alleged to have occurred in 1987 in relation to the JVP uprising. Nevertheless, they were able to conduct a significant number of inquiries, including investigating new cases of enforced disappearances that occurred after they were set up, since they did not have a time-limit.

481. During the three years of their existence, the three Zonal Commissions received and analysed 27,526 complaints, out of which some 16,800 cases were established to amount to enforced disappearances. The Commissions found “credible material indicative of those

⁴⁰¹ The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 644/27 of January 11, 1991.

⁴⁰² Schedule ‘A’, Extraordinary Gazette No. 644/27 of January 11, 1991

⁴⁰³ A Legacy to Remember; Sri Lanka’s Commissions of Inquiry 1963-2002, Ed. Kishali Pinto-Jayawardena, The Law and Society Trust.

⁴⁰⁴ The Gazette of the Democratic Socialist Republic of Sri Lanka, Extraordinary, No. 784/1 of September 13, 1993. The term “involuntary removal” in the warrants that created the commissions does not correspond to the definition of enforced disappearances in international law: see the Warrants of the Commissions Gazette No. 644/27 of January 11, 1991, The Gazette of the Democratic Socialist Republic of Sri Lanka, No. 697/5 of January 13, 1992, Gazette No. 751/1 of January 25, 1993, and Gazette No. 784/1 of September 13, 1993, all of which use this same language regarding involuntary removal of persons; See also A Legacy to Remember; Sri Lanka’s Commissions of Inquiry 1963-2002, Ed. Kishali Pinto-Jayawardena, The Law and Society Trust,

⁴⁰⁵ A Legacy to Remember, Op.Cit p.22

⁴⁰⁶ Amnesty International, “Time for Truth and Justice: Observations and recommendations regarding the commissions investigating past human rights violations”, April 1995.

⁴⁰⁷ The Law and Society Trust, A Legacy to Remember; Sri Lanka’s Commissions of Inquiry 1963-2002: A Reference Guide to Commission Reports with a Tabulated List of Recommendations. September 2010, p. 20,
<http://www.lawandsocietytrust.org/PDF/a%20legacy%20to%20remember%3B%20sri%20lanka's%20commissions%20of%20inquiry.pdf>

responsible” in 1,681 cases⁴⁰⁸, and compiled lists of names of several hundred alleged perpetrators, mostly from the Armed Forces (Army, Navy and Air Force) and police, but also some politicians. For example, the Zonal Commission working on the Central, North-Western, North Central and Uva provinces included specific findings and evidence in respect of the individual complaints investigated and perpetrators in separate annexes.

482. The reports of the three Zonal Commissions of Inquiry were submitted to the President in September 1997. Their observations and recommendations were made public, but not the lists of perpetrators, which have remained unpublished. OISL has nevertheless received copies of those lists.

483. In April 1998, the All Island Commission of Inquiry into Involuntary Removal and Disappearances of Certain Persons (known as the All Island Commission) was established by the President to inquire only into the 10,136 complaints submitted to, but not investigated by, the three Zonal Commissions⁴⁰⁹. It completed its Final Report in 2001, having investigated 4,473 complaints of disappearances. Its findings on some cases were referred to the Missing Persons Unit and the Disappearances Investigation Unit of the Police set up following the Zonal Commission’s recommendations (see below, criminal investigations). The All Island Commission’s recommendations and observations were made public, but not its information relating to alleged perpetrators. However, OISL has obtained a confidential list of 318 alleged perpetrators named by the All Island Commission.

484. While the Commissions did not resolve all cases of disappearances or lead to the prosecution of many of those responsible, they did nevertheless collect extensive material about disappearance cases, structures and individuals allegedly involved. OISL believes that the extensive information and evidence gathered by these Commissions and the subsequent police and judicial investigations should be reviewed as part of any new comprehensive investigation into all patterns and cases of enforced disappearances, and should be used as part of a vetting process for all security forces.

Presidential Commission on Abductions, Disappearances, and Killings (September 2006) and its follow-on Commission (May 2007)

485. In September 2006, in response to increasing criticism about the resurgence of abductions and disappearances after 2005, President Rajapaksa set up a Presidential Commission on Abductions, Disappearances, and Killings, headed by former judge Mahanama Tillakeratne.⁴¹⁰ His final report was submitted in May 2007 but not made public. However, OISL has also reviewed a copy of the unpublished report.

486. While highly critical of police failure to investigate and even ignoring evidence of “certain powerful persons” behind the incidents, the report appeared to undermine allegations of disappearances linked to the security forces, suggesting that they were the result of criminals, family disputes, “abductions ...to win over young girls”, and heroin

⁴⁰⁸ United Nations Human Rights Committee, Fourth Periodic Report of Sri Lanka, CCPR/C/LKA/2002/4, 18/10/2002, para. 156

⁴⁰⁹ See “Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces”, 1997, “Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces”, 1997; “Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island), 2001.

⁴¹⁰ Gazette (Extraordinary) No 1462/30- 2006 and Gazette (Extraordinary) No 1505/17-2007.

addicts involved in disputes.⁴¹¹ The involvement of security forces was underplayed: “It came to light that at times military personnel and police officers too had carried out abductions. They should be treated as persons who have performed an illegal act.”

487. Statements made by Justice Tillakeratne demonstrate the lack of serious and credible investigations by his commission. For example, in May 2007, he reportedly claimed that “some invisible hand” in Jaffna and Batticaloa was responsible for abductions and that “no one said a single word against anyone in the army or police”. He also noted that “a majority of the abductions were not exactly abductions as [the persons concerned] have left their homes temporarily over trivial matters like family disputes among others⁴¹². He also stated that, according to the evidence gathered by the Commission, some of the abductees when they were last seen seemed to have gone with the people whom they knew and of their own free will.”⁴¹³ The report noted that only a few people had been taken away by force.

488. The unpublished findings of the Commission, reviewed by OISL, confirm the lack of credibility and independence of the investigation. In stating that cases of disappearances were used as a tool of political propaganda against the Government, the Commission downplayed the phenomenon. The Commission also attributed lack of proper investigation to police inexperience with domestic legal provisions relating to the maintenance of law and order such as Penal code provisions, the Emergency Regulations and the Constitution.

489. Following the submission of the final report of the Tilakeratne Commission, another one-man Presidential Commission, headed by the same Judge was set up by President Rajapaksa in June 2007, to investigate into abductions, disappearances, killings by unknown persons that had occurred in all parts of Sri Lanka during the period starting 13 September 2006. Its final, unpublished report covering the period September 2006 to November 2009, also received by OISL, was submitted to the President in December 2009.

490. As with the previous Commission, this report appeared to be primarily aimed at undermining and dismissing allegations of disappearances as part of a propaganda campaign to stain the image of the country. It described as “baseless propaganda” reports of disappearances, rapes of Tamil women and security force killings of Tamil youth, and referring to a “sensationalisation of minor incidents”⁴¹⁴.

491. At the top of the list of recommendations in the report was to bring legal action against those “who made complaints to the Police of abductions or disappearances knowing very well where the person concerned was at the time.” The report stated that “from the reports made available by police, it became apparent that the incidents of disappearances which were reported [in the media] were stories that were “baseless and cannot be believed.” The Commission stated that in 90 per cent of the cases, people had left their home for various reasons such as family disputes, love affairs, to avoid arrest on warrants issued by the Court, joining a terrorist organization. Out of 22,474 complaints of disappearances received, the report stated that 20,637 individuals had either returned or had been found, and that the remaining cases needed to be investigated.

⁴¹¹ Report of the Presidential Commission on Abductions, Disappearances and Attacks on Civilians resulting in deaths throughout the Island, May 2007, OISL unofficial translation of extracts of the original report.

⁴¹² International Crisis Group, “Sri Lanka’s Human Rights Crisis”, Asia Report no 135, June 14, 2007.

⁴¹³ Majority of “abductees” found to have returned <https://lrrp.wordpress.com/2007/06/30/majority-of-%E2%80%9Cabductees%E2%80%9D-found-to-have-returned/>

⁴¹⁴ Report of the 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, December 2009, extracts unofficially translated by OISL.

Presidential Commission of Inquiry appointed to investigate and inquire into alleged serious violations of Human Rights arising since 1 August 2005

492. In November 2006, a Presidential Commission of Inquiry, referred to as the Udalagama Commission, was established to investigate 16 specific incidents of alleged serious violations of human rights since 1 August 2005. These included a number of high profile cases at the time, including the enforced disappearance of Father Jim Brown and his aid Wenceslaus V. Vimalatha, a local parishioner.⁴¹⁵ The unreleased findings of the Commission's report which OISL has seen indicate that Father Brown's disappearance was not investigated "due to a lack of evidence, importantly the inability to find the body of the alleged deceased".⁴¹⁶

493. According to the information gathered by OISL, Father Brown was a Tamil Catholic priest who had offered refuge in his church to people during shelling by security forces of Allaipiddy, on 12 August 2006, during which many civilians, including children, were injured and some died.⁴¹⁷ On 20 August 2006, Father Brown and Wenceslaus V. Vimalatha were travelling by motorbike to Jaffna from the island of Kayts. They were last seen at a Navy checkpoint in Allaipiddy. The surrounding area was under the control of the SLN. A complaint of the disappearance of the two men was filed with police and the Acting Magistrate of Kayts began to investigate. Her attempts to obtain the logbook at the Navy checkpoint were blocked by the Navy. The next day, the Magistrate was reportedly told that her post was being taken over by another magistrate and she was transferred to other duties. Her investigation into Father Brown's disappearance was thus curtailed and little was done following her removal.⁴¹⁸

494. According to the CID report handed to the Udalagama Commission, the CID took on the investigation on 30 August 2006. As of November 2006, it appears that the investigation, though continuing at the time, was focussing more on accusations made by a Navy Commander that Father Brown had helped the LTTE dig bunkers than establishing the circumstances of the disappearance. In March 2007, a torso was found on the beach and a magistrate ordered DNA tests to assess whether it was that of Father Brown. The Government subsequently announced that DNA tests had shown that this was not the case.⁴¹⁹ However, OISL's attempts to confirm that tests were carried out and if so what happened to the results have been unsuccessful. It has no information to indicate that investigations into the two disappearances continued.⁴²⁰

495. Prior to his disappearance on 20 August 2006, Father Brown had lodged two complaints with the Human Rights Commission of Sri Lanka, stating that he felt threatened.⁴²¹ He was repeatedly accused by the SLN of supporting the LTTE, and had reported to others that he felt threatened, in particular by a local Naval commander.

⁴¹⁵ Report of the Presidential Commission of Inquiry appointed to investigate and inquire into alleged serious violations of Human Rights arising since 1 August 2005, page 8, May 2009.

⁴¹⁶ Ibid.

⁴¹⁷ On this case, see also Human Rights Watch, *Recurring Nightmare*, cit. March 2008, p. 66; See also, proceedings of public sittings of the LLRC, Representation by Mr. A. Santhiapillai, 12 November 2010; Submission by the Catholic Diocese of Mannar to the LLRC, 8 January 2011.

⁴¹⁸ University Teachers for Human Rights (UTHR), Special Report No. 25, 31 May 2007; though unverified by OISL, the report gives a detailed account of the attempts of Father Brown and also the local Magistrate to transfer the injured to hospital in spite of obstacles created by the Navy.

⁴¹⁹ 'DNA report surfaces misinformation campaign'- Colombo
http://www.defence.lk/new.asp?fname=20070613_07

⁴²⁰ 'DNA report surfaces misinformation campaign'- Colombo
http://www.defence.lk/new.asp?fname=20070613_07

⁴²¹ WS on file

Reports suggest that a senior SLN commander may have been involved in the disappearance.

Criminal investigations

496. The lack of a specific offence of disappearance in the Sri Lankan Penal Code represents an obstacle to the investigation, prosecution and punishment of those responsible for enforced disappearances. LLRC, WGEID, the United Nations Human Rights Committee, and the Committee against Torture have all recommended that Sri Lanka criminalizes disappearances⁴²².

497. In its replies to the list of issues in relation to its Fifth Periodic Report to the Human Rights Committee, in September 2014, the Government stated that “the existing provision in the Penal Code, sections 350 to 360, adequately covers any situation of kidnapping, abduction or disappearances”.⁴²³ However, this provision has rarely been used to prosecute cases of enforced disappearances, indicating that the main obstacle is more related to the lack of political will or interest to uncover the possible involvement of security forces in enforced disappearances.

498. In paragraph 9.46 of its 2011 report, the LLRC stated, in relation to cases of disappearances, that “In many instances it was revealed that formal complaints have been made to police stations, the Human Rights Commission of Sri Lanka and the ICRC. In some cases, submissions had also been made to the previous Commissions of Inquiry. Yet, the next of kin continue to complain that the whereabouts of many of those missing persons are still unknown... The Government therefore is duty bound to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated and the perpetrators brought to justice” (para 9.46).

499. OISL has observed that in the vast majority of cases of enforced disappearances in Sri Lanka, with the exception to the follow-up to the three Zonal Commissions and the 1998 All Island Commission, the authorities have made little or no efforts to undertake any criminal investigations in this regard.

500. On the basis of recommendations from the three above-mentioned Zonal Commissions, at the end of 1997, the Government decided to “institute criminal proceedings against the perpetrators”. It set up a “Disappearances Investigations Unit” (DIU) under the Deputy Inspector General of the Criminal Investigations Department in order to conduct criminal investigations, and to collect the additional evidence needed for cases to proceed to court. According to one report, police investigations were initiated against 1,560 alleged perpetrators of disappearances, from the police and armed forces.

501. In July 1998, the Government established a separate unit in the Attorney’s General’s Department named the “Missing Persons Unit” (MPU).⁴²⁴ According to information provided to WGEID during a visit to the country in October 1999, by the following year, MPU had received 890 cases of disappearance from DIU and, as a result, criminal proceedings had been initiated against 486 individuals in relation to 270 cases.⁴²⁵

⁴²² E/CN.4/2000/64/Add. 1, para. 63 ; CCPR/CO/79/LKA, para. 10; CAT/C/LKA/CO/3-4, para.9; LLRC Report para. 9.59

⁴²³ Human Rights Committee, List of issues in relation to the Fifth Periodic Report of Sri Lanka, Addendum – Replies of Sri Lanka to the list of issues, 17 September 2014, para. 62.

⁴²⁴ Ibid.

⁴²⁵ E /CN.4/2000/64/Add.1: Report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (25-29 October 1999), 21 December 1996 Human Rights

502. In its Second Periodic Report to the Committee against Torture (CAT)⁴²⁶ in 2004, the Government stated that the DIU had carried out investigations into 3,615 cases, of which 2,462 had been completed. Of these, most were closed on the advice of the Attorney General. According to the Government, 376 cases were filed before the High Court, nearly 300 of them for abduction and unlawful confinement. One hundred and thirty-five cases had been completed, but only 12 had resulted in convictions by the High Court. The first conviction was on 14 September 1999, when a police officer was convicted for the crime of abduction and sentenced to five years of imprisonment.

503. According to sources close to the Zonal and All Island Commissions, most of the cases referred to courts involved alleged perpetrators of a low rank in the police and military. Since DIU itself consisted of police officers, credible sources told OISL that it was reluctant to pursue investigations against superior officers.

504. A circular issued by the Inspector General of Police at the commencement of the investigations by the Zonal Commissions of Inquiry, directed all Officers in Charge of police stations in the country to preserve all books and records pertaining to the period of terror in Sri Lanka until the investigations of the Commissions were concluded. The reports of the Commissions reportedly mentioned many instances where the Officers in Charge of certain police stations destroyed the relevant books, disregarding the circular, and thereby destroying incriminating evidence against certain police officers who were responsible for disappearances. A recommendation by the commissions to take disciplinary action against such officers was reportedly ignored.

505. Furthermore, some of those named by the Zonal Commissions as alleged perpetrators have reportedly since been promoted. For example, according to the Central Zone Commission's 7th interim report, one particular police officer was named in most of the complaints inquired into at Anamadawa Police Station at that time. According to the Central Zone Commission, there was credible material indicating that he had also threatened some of the witnesses who had given evidence before the Commission. He was publicly named in the Commission's report but was not prosecuted. He has received several promotions as Assistant Superintendent of Police (ASP) Colombo and Superintendent of Police (SSP). He is now Deputy Inspector General of Police (DIG).

506. In another case, a DIG appointed by the Government of President Rajapaksa in charge of Trincomalee district, was included in the list of alleged perpetrators of disappearances submitted to the Government by the Zonal Commission on the Southern Province.

507. In another case, a Lieutenant Colonel, whose name is on file, was alleged to be one of the main perpetrators of disappearances that occurred in Jaffna in 1996 and 1997 when he was commander of an SLA camp there⁴²⁷. Criminal investigations were reportedly launched, including into the disappearance of a group of villagers in 1996.⁴²⁸ The Additional Magistrate in Jaffna, who pursued the case while in the post from 2003-2006, as she had tried to do in the case of Father Brown, reportedly received threats, was transferred to Colombo in 2007. OISL received unconfirmed media reports in February 2015, that the

Committee, Fourth periodic report, CCPR/C/LKA/2002/4, para. 156-162; United Nations Committee against Torture, Second Periodic Report, CAT/C/48/Add. 2, para.63.

⁴²⁶ CAT/C/48/Add.2, 6 August 2004

⁴²⁷ Report submitted by the Committee of Inquiry into Disappearances of Persons in the Jaffna region, appointed by the Human Rights Commission of Sri Lanka, 2003;

⁴²⁸ Wikileaks: US was following ..Case Involving the Disappearance of 25 Villagers from Jaffna; Colombo Telegraph, 15 October 2012.

individual had reportedly been reinstated into the Army and appointed initially as Director of Operations at the Army Headquarters and subsequently as Director of Infantry⁴²⁹.

508. Various United Nations human rights mechanisms have noted that the majority of prosecutions initiated against the authorities on charges of abductions have been inconclusive due to a lack of satisfactory evidence.⁴³⁰ In the time available, OISL was not able to gather information about or assess the cases which were referred to the courts by DIU and MPU but believes that all such cases should be reviewed.

The Lessons Learnt and Reconciliation Commission

509. In its 2011 report, the LLRC took a very strong position on the issue of enforced disappearances. It highlighted the failure to implement recommendations of previous commissions dealing with enforced disappearances, stating that they “warrant immediate implementation, as these will help address this serious issue”. It added that “Continued failure to give effect to such critical recommendations of past commissions gives rise to understandable criticism and scepticism regarding government appointed commissions from which the LLRC has not been spared”.

510. Although not set up as a Commission of Inquiry nor focussed on disappearances, the LLRC received, during its hearings, 1,018 complaints of cases of persons who had allegedly disappeared after arrest by the Army and Navy⁴³¹ in particular, as well as by armed groups⁴³². Given the large number of representations received, the LLRC called on the Government “to direct the law enforcement authorities to take immediate steps to ensure that these allegations are properly investigated into and perpetrators brought to justice⁴³³.” The LLRC also recommended that the Government assist families to deal with the trauma of not knowing the whereabouts of their family members⁴³⁴.

511. The LLRC specifically recommended that “given the complexity and magnitude of the problem, and considering the number of persons alleged to have disappeared, and the time consuming nature of the investigations involved..., a Special Commissioner of Investigation be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate.⁴³⁵

The Presidential Commission to Investigate Complaints Regarding Missing Persons (2013)

512. In a response to the recommendations by the LLRC and to mounting international pressure, President Rajapaksa appointed a new Presidential Commission to Investigate Complaints Regarding Missing Persons on 15 August 2013. Its original mandate was to investigate the cases of “persons resident in the Northern and Eastern Provinces during the period 10 June 1990 to 19 May 2009, who have been abducted or have disappeared from their places of residence”.⁴³⁶ The Commission had three members with Justice Parakrama

⁴²⁹ Military top brass shuffle casts doubts on Sri Lanka “internal mechanism”, JDS, 4 March 2015.

⁴³⁰ CCPR/CO/79/LKA 2003, par.9

⁴³¹ See Transcripts of LLRC Sitings – Mullaitivu and Trincomalee for example.

⁴³² LLRC Report, Annex 5.1

⁴³³ LLRC Report, para. 9.46

⁴³⁴ LLRC Report, para. 9.58

⁴³⁵ LLRC Report, para. 9.51

⁴³⁶ Gazette [Extraordinary] No 1823/42-2013. Harischandra Gunaratna, « missing Persons Commission could not be influenced, would not rush – Chairman », 27 November 2013, The Island, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=92960. See National Plan of Action for the Implementation of LLRC Recommendations (November 2014)

Paranagama named as Chair, although two additional members were subsequently appointed. This Commission's mandate has been extended twice and was due to complete its task by 15 August 2015.⁴³⁷ Latest reports indicate the mandate of the Commission has been extended further, but this has not been formally gazetted.

513. After her mission to Sri Lanka in 2013, High Commissioner Navy Pillay in referring to the appointment of a new Commission of Inquiry into disappearances urged the Government to broaden the Commission's mandate: "unfortunately the new Commission will only cover disappearances in the Northern and Eastern provinces between 1990 and 2009, which means that the many 'white van' disappearances reported in Colombo and other parts of the country in recent years will not fall within its scope"⁴³⁸. The WGEID also expressed similar concerns. In 2014, the period covered by the Commission was broadened from 1 June 1990 to include the period 1 January 1983 - 19 May 2009. On 15 July 2014, the scope of the Commission's mandate was also extended to inquire into and report on matters that have been referred to in paragraph 4.359 of the LLRC report. These include issues related to respect for the principles of proportionality and distinction; the applicability of IHL to the LTTE, and the violation of IHL or IHRL through the use by LTTE of civilians as "human shields" in the context of the armed conflict that ended in May 2009.⁴³⁹ Following the expansion of its mandate, an international advisory council was also appointed to assist the Commission. The mandate of the advisory council has recently lapsed.

514. Despite the widespread mistrust in national mechanisms expressed by the majority of witnesses interviewed by the OISL, and the sense of desperation felt by family members, nonetheless many still addressed complaints to the Commission. According to its Interim Report of April 2015 (which remains unpublished, but a copy has been reviewed by OISL), the Commission had received 13,378 complaints from 25 Districts, covering alleged disappearances from January 1983 to 19 May 2009⁴⁴⁰. The majority of the complaints relates to cases which occurred between 2005 and 2009, mainly in Batticaloa, Jaffna, Mullaitivu, Kilinochchi, Mannar, Trincomalee and Vavuniya. By November 2014, the Commission said it had initiated inquiries into almost 1500 complaints. By April 2015, the Presidential Commission had held a total of eleven public sittings in Kilinochchi, Ampara, Trincomalee, Jaffna, Batticaloa, Mullaitivu, Mannar and Vavuniya.

515. In the interim report, the Commission identified a list of ten cases in which there is "*prima facie* evidence" against members of the security forces who were named at the public hearings as responsible for disappearances and recommended domestic legal action against them⁴⁴¹. It also said it had identified 59 cases for in-depth investigation with a view to recommending judicial action⁴⁴².

516. The Presidential Commission also noted that a vast majority of cases of disappearances resulted from the practice of arrests without warrant and the lack of

⁴³⁷ More Time For Probe on Missing, <http://www.thesundayleader.lk/2015/02/08/more-time-for-probe-on-missing/>, 15 February 2015.

⁴³⁸ Human Rights Council, Oral Update of the High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka, 25 September 2013, A/HRC/24/CRP.3/Rev.1, para. 13; see also Centre for Policy Alternatives, A Commentary on the Presidential Commission to Investigate Missing Persons During the period of June 1990 – May 2009 in the Northern and Eastern Provinces, March 2014, p. 5.

⁴³⁹ Gazette 1871/18 (July 14, 2014)

⁴⁴⁰ Interim Report, Presidential Commission to Investigate into Complaints Regarding Missing Persons, April 2015

⁴⁴¹ Interim report, cit., Annex H

⁴⁴² Id., Annex L

notification of the detention centres where detainees are held. The Presidential Commission noted that the Ministry of Defence and Ministry of Justice had failed to comply with its written requests to release a list of names of persons who were detained in prisons, detention camps, refugee camps, and rehabilitation centres. It also made important recommendations to the Government to “instruct the Security Forces to provide all information...particularly details of persons who surrendered at Vadduvahal, Mulliwaikal, Omanthai and the disappearance of persons taken into custody from refugee camps for questioning” and that “if any person is in detention, the family or relatives of such persons so held should be notified where such person is held, including facilitating visits by such person’s relatives to the detention centres”.

517. Following the Commission’s recommendations, in July 2015, the Government announced the appointment of a special investigation team under a retired judicial officer to expedite investigation into some cases, although its status is not known.⁴⁴³

518. In spite of these important findings, there has been considerable concern expressed about the work of the Commission and, in OISL’s assessment, has so far failed to conduct a comprehensive, independent and transparent inquiry. The expansion of the mandate of the COI in July 2014 to include investigations into broader violations related to the conflict, and particularly focussed on LTTE abuses, raised strong concerns among human rights organizations and family members of disappeared persons that this would detract from the Commission’s ability to deliver on its primary responsibility: to assist families of the disappeared.⁴⁴⁴

519. Family members who approached the Commission were usually asked to fill in a form with details of the “disappeared” person, and the circumstances of the disappearance and were told that the Commission would send a team to enquire. In many cases, there has not yet been any follow-up.

520. Although OISL recognizes the importance of public hearings, the quality of the proceedings are reported to have been affected by various factors, such as the family members’ lack of knowledge of the Commission’s mandate, the inadequate time that has been allocated for hearings⁴⁴⁵ and the poor quality of translation at times. In particular, from the reports of independent observers, it appears that the Commission often did not provide an adequate number of Tamil-speaking official interpreters and the interpretation provided was at times summary, incomplete or inaccurate. Questions and answers were often allegedly misinterpreted.

521. The selection of the complainants for the public hearings was also reportedly not based on clear criteria. According to diplomatic sources, during the public hearings in Kilinochchi, most of the cases selected were cases in which the suspected perpetrators were non-state actors, predominantly the LTTE. In a press statement regarding its interim report⁴⁴⁶, the Presidential Commission said that in the Northern Province, 60 percent of the

⁴⁴³ [http://www.pcicmp.lk/images/NewsEvents/Press%20Release%2024.07.15.pdf](http://www.pcicmp.lk/images/NewsEvents/Press%20Release%202024.07.15.pdf)

⁴⁴⁴ Amnesty International, Press Release: Sri Lanka: Activists petition parliament on Day of the Disappeared, <http://www.amnesty.org/en/for-media/press-releases/sri-lanka-activists-petition-parliament-day-disappeared-2014-10-27>; Center for Policy Alternatives, Concerns On The Expansion Of The Mandate Of The Commission Of Inquiry To Investigate Into Complaints Regarding Missing Persons, 25 July 2014

⁴⁴⁵ For example, during the first day of the hearings in Jaffna in February 2014, most of the cases were given an average time of 20-30 minutes which became 10 minutes on the last day.

⁴⁴⁶ Presidential Commission on Missing Persons, Press release – Submission of the Interim Report by the Presidential Commission on Missing Persons, <http://www.pcicmp.lk/images/press%20release%20Interim%20Report.pdf>

allegations of enforced disappearances received were levelled against the LTTE. However, the Commission's analysis of written complaints shows the security forces were responsible for 19 per cent, the LTTE for 17 per cent, and persons or groups unknown for more than 50 per cent, suggesting a higher proportion of LTTE cases have been selected for the public hearings, raising questions of selectivity.

522. Furthermore, OISL received testimonies from several witnesses highlighting the Commission's lack of contextual knowledge on key issues related to disappearances as well as the ambiguous and irrelevant nature of some of the questions posed.⁴⁴⁷

523. OISL also received reports of cases of families of disappeared persons who suffered interference, intimidation and surveillance by the security forces after having provided testimony before the Presidential Commission of Inquiry.⁴⁴⁸ In its interim report, the Presidential Commission accused "certain sections of the media" of reporting that persons appearing before it had been harassed by security forces' personnel and stated that "not a single complaint was made by any person appearing before the Commission that they were harassed by security forces personnel"⁴⁴⁹.

524. OISL received information, however, that security personnel dressed in civilian clothing have attended and carefully monitored those attending the hearings and families have been intimidated and told not to attend the hearings.⁴⁵⁰ According to diplomatic sources, "a considerable number of testimonies disclosed the nature of the interferences of TID, but [the] Chairman stated that there are many different institutions such as the TID, CID etc, which have been investigating disappearances, hence families are encouraged to cooperate with these investigations whenever possible".⁴⁵¹

International mechanisms: the role of the Working Group on Enforced or Involuntary Disappearances (WGEID)

525. In the face of repeated obstacles to establishing the fate of their loved ones, family members and supporting NGOs have submitted large numbers of cases to the WGEID in the hope of clarifying their fate and whereabouts. Since its establishment in 1980, the Working Group has transmitted 12,536 cases of disappearances to successive Sri Lankan Governments. According to the most recent figures contained in the last annual report of the Working Group, the total number of outstanding cases in Sri Lanka amounts to 5731⁴⁵².

526. The Working Group has played a key role in examining reports on cases of enforced disappearances and pressing the Government to conduct investigations into such allegations. It undertook three field missions to Sri Lanka in 1991, 1992 and 1999. It had not been allowed to visit the country since, despite repeated requests and follow-ups.

⁴⁴⁷ For example, during one set of public hearings the Commissioners often asked questions that were not relevant to an inquiry into enforced disappearances such as whether the families are living peacefully with the presence of the SLA.

⁴⁴⁸ WS on file; See also HRC ; Written statement submitted by the Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status, 5 September 2014, A/HRC/27/NGO/91

⁴⁴⁹ Presidential Commission to Investigate Into Complaints Regarding Missing Persons, Interim Report , April 2015, p. 7.

⁴⁵⁰ Sources on record.

⁴⁵¹ Public sitting - Mullaithivu, Northern Province (July 5-8, 2014); Public sitting - Mannar Northern Province (August 8-11, 2014)

⁴⁵² Report of the Working Group on Enforced or Involuntary Disappearances, 4 August 2014, A/HRC/27/49, page 13

527. The new Government that took office in 2015 has since agreed to a visit. The visit, initially scheduled for 3-12 August 2015, was postponed at the request of the Government due to the proximity to Parliamentary elections on 17 August. It has now been reconfirmed for November 2015.

528. Following its visits in the 1990s, the Working Group made a number of recommendations to the Government in order to prevent and investigate disappearances.⁴⁵³ The Government at that time provided a considerable amount of information on cases⁴⁵⁴ which led the Working Group to consider 4,390 cases as clarified in 2002.⁴⁵⁵

529. In a number of cases, the Government replied that death certificates had been issued and/or compensation granted or was in the process of being granted. With regard to the remaining cases, the Government claimed that it was unable to trace the persons concerned because the addresses that had been provided were incorrect or unclear, or because the family had left the area; no such person had disappeared from the address provided; cases were pending in courts of law; family members had not requested or had declined death certificates or compensation; the persons were reported to be alive; the disappearance had not been reported to any government authority.⁴⁵⁶

530. However, the Government failed to implement crucial recommendations made by the Working Group, such as the establishment of an independent body with the task of investigating all cases of disappearances which had occurred since 1995; the setting up of a central register of detainees as provided for in article 10(3) of the Declaration and that the prohibition on enforced disappearances should be included as fundamental right in the Constitution of Sri Lanka.

531. From 2008, the Government consistently provided a high number of replies to WGEID in relation to pending cases. However, for most of them, the information was considered not sufficient to clarify the cases.⁴⁵⁷ In addition, the Government has not provided adequate responses to general allegations detailing the Working Group's concerns relating to enforced disappearances in Sri Lanka which occurred from 2006 to 2009.⁴⁵⁸

IX. Torture and other forms of cruel, inhuman or degrading treatment

Introduction

532. OISL focused on torture and other cruel, inhuman or degrading treatment or punishment allegedly committed by Government security forces as one of its priority themes because of the scale and gravity of the allegations it received. In the time available,

⁴⁵³ See E/CN.4/1992/18/Add.1; E/CN.4/1993/25/Add. 1; E/CN.4/2000/64/Add.1

⁴⁵⁴ Report of the Working Group on Enforced or Involuntary Disappearances, 18 January 2002, E/CN.4/2002/79, par. 286

⁴⁵⁵ A/HRC/27/49, para 287; 6581 of these cases were considered clarified by WGIED, most of them after the Government reported they were deceased – it should be noted that many relatives of the disappeared received death certificates in the late 1990's even though the fate of the victims had not necessarily been clarified (see Issuance of death certificates above).

⁴⁵⁶ Ibid.

⁴⁵⁷ A/HRC/21/45, para 506; A/HRC/16/48, para 444 ; A/HRC/WGEID/99/1, para 126; A/HRC/WGEID/100/para.95; A/HRC/WGEID/102, para 139; A/HRC/WGEID/103, para 156, A/HRC/WGEID/104 para 118;

⁴⁵⁸ A/HRC/4/41 para. 337-340; A/HRC/19/58/Re v.1 par. 495-501