INFO NOTE

UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER

Info Note 3
Report of the OHCHR Investigation on Sri Lanka, September 2015

Violations related to deprivation of liberty and enforced disappearances

OISL documented "long standing patterns of arbitrary arrest and detention" by Government security forces, as well as abductions by paramilitary groups linked to them (1120). Such acts, it says, often led to "enforced disappearances". This term refers to incidents where a person is taken by state agents, or by people acting with the authorisation, support or acquiescence of the state, but their arrest remain unacknowledged, with no further information on their whereabouts.

The report notes that Sri Lanka has one of the highest rates of cases of enforced disappearances in the world, with some cases dating back to the 1970s (1124).

OISL reviewed "reliable" information on hundreds of such cases between 2002 and 2011, many of them in the Northern and Eastern provinces of Sri Lanka.

The report outlines how such acts were facilitated by the extensive powers of arrest and detention contained in Sri Lanka's Emergency Regulations and the Prevention of Terrorism Act (329-342).

It says those targeted for arbitrary detention or enforced disappearance included suspected LTTE cadres or sympathisers, journalists, humanitarian workers and civil society activists (344).

Victims would typically be bundled into the back of unmarked vehicles, frequently white vans, and be blindfolded and tied up before being taken, often by a circuitous route, to their first place of detention. Such arrests were often violent. One man described being dragged by armed men to a white van parked outside his house. "They beat me and I fell unconscious. When I regained consciousness, I had pain in my head and in my back. I was in a small room, a cell, with a toilet in the corner and no windows," he said (348-49).

The report said that different branches of the Sri Lankan security forces worked together on such arrests, "demonstrating a high degree of coordination, joint intelligence and information sharing, as well as joint planning" (352).

Sometimes whole groups of people would be arrested. These included people picked up during "cordon and search" operations by the Sri Lankan Army which were particularly prevalent from 2006 until the immediate aftermath of the conflict. Soldiers would cordon off entire villages in the middle of the night, conducting door-to-door searches or forcing people to assemble in a public place. Those suspected of involvement with the LTTE were taken away (355-9).

A number of LTTE cadres and others disappeared at the end of the war after surrendering to, or being detained by, the Sri Lankan army. The report highlights the disappearance of a priest, Father Francis Joseph, together with a group of LTTE cadres and their associates, on

18 May 2009. He was last seen helping to facilitate the surrender of a group of LTTE cadres to the Sri Lankan military. Witnesses reported seeing Father Francis and the group being led away by security forces. Some said they saw the group boarding buses (433-437).

The report highlights the difficulties relatives have in tracing family members who have disappeared. It describes the case of Prageeth Eknaligoda, a political cartoonist who worked for Lankaenews. He disappeared on 24 January 2010 after leaving his office. When he failed to return home, police initially refused to open a case on his disappearance. A habeas corpus petition was filed in the Colombo Appeals Court the following month, asking for a full investigation. However, the report says, the case has been repeatedly postponed, either because the police asked for more time for their investigations or because the magistrate or judge was on leave. In 2011, the then Attorney General told a UN Committee that Mr Eknaligoda had "taken refuge in a foreign country", but later retracted this (409, 453, 455). In August 2015, more than five years after Mr Eknaligoda disappeared, police announced that they had arrested several military personnel in connection with the case. However, OISL stresses, this new investigation must not only clarify the circumstances of Mr Eknaligoda's arrest and disappearance, but also "the cover up and chain of command responsibility" (456).

Enforced disappearances, the report says, are particularly traumatic for the families of victims, some of whom face threats or harassment for trying to locate their loved ones. One woman was abducted in a "white van" herself and beaten because of her persistence (465).

The fact that there is no central registry of detainees and a lack of transparency concerning places of detention facilitates enforced disappearance and makes it extremely difficult to trace people who have "disappeared" (451). Some families describe being sent from place to place, in some cases spending money for interpreters to help them at Government offices, but receiving no information (448).

This leaves desperate relatives open to exploitation by extortion. Several described paying money to anonymous callers who promised to reveal the whereabouts of their children, but then disappeared after taking the money (452).

Disappearances often left Sri Lankan families in legal and financial limbo. The report points out that death certificates are the only legal documents which allow for the transfer of property, remarriage, compensation applications and access to social welfare and pensions. Under Sri Lankan law, families are allowed to register a person as dead if they have been missing for more than a year. However, many families are reluctant to apply for a death certificate, fearing that this could be used to stall any investigation into their loved one's disappearance (457-461). The Government has this month approved plans for a new "certificate of absence" which will hopefully provide families with an intermediate remedy.

The report outlines numerous Commissions of Inquiry set up by successive Sri Lankan governments to investigate enforced disappearances. However, it notes that while some of them have awarded compensation to relatives, or made concrete recommendations, few meaningful steps have been taken to ensure accountability or prevent such violations happening again (1125). The report also evaluates the work of the current Presidential Commission on Missing Persons (512-24).

OISL suggests that there are reasonable grounds to believe that enforced disappearances may have been committed as part of “a widespread and systematic attack” against the civilian population. In particular, it says, “there are reasonable grounds to believe that those who disappeared after handing themselves over to the Army at the end of the conflict were deliberately targeted because they were, or were perceived to be, affiliated with LTTE forces.” (1128)

It calls on the Government to enact legislation to criminalise enforced disappearances, and develop a national database of all detainees to help relatives obtain information on the whereabouts of their loved ones. It also suggests that the Government dispense with the current Presidential Commission on Missing Persons and transfer its cases to “a credible and independent institution developed in consultation with the families of the disappeared” (Recommendations 18, 25, 26). The UN Working Group on Enforced and Involuntary Disappearances is scheduled to make a long-awaited country visit to Sri Lanka in November 2015.

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The full report can be found at:
http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_CRP_2.docx