

INTERNATIONAL  
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PROJECT

**Press release: New ITJP website lists 280 names of enforced disappearance in Sri Lanka all on one day.**

**15 May 2018**

**Johannesburg:** Sri Lanka's Office of Missing Persons is duty bound to question war-time military leaders over hundreds of cases of enforced disappearance that took place on the final day of the civil war in 2009 if it wants to recover the truth about these cases. Among those who disappeared were at least 29 Tamil children, last seen with their families in the custody of the Sri Lankan Army on or around 18 May 2009 in what are regarded as classic cases of enforced disappearance in accordance with international law.

*"This is the largest single group of enforced disappearance in Sri Lanka's history - hundreds of people disappearing at the same time and place with multiple eyewitnesses both inside and outside the country,"* said the International Truth and Justice Project's Executive Director, Yasmin Sooka. *"We have written to the Office of Missing Persons saying this is the first case they should investigate if they are serious about criminal accountability for enforced disappearance. They can start by questioning Major General Shavendra Silva and General Jagath Jayasuriya, whom eyewitnesses say personally observed the surrenders and those security forces in whose custody they were placed."*

The 58<sup>th</sup> Division of the Sri Lankan Army has to date steadfastly refused to hand over a list of surrendees from the final day of the war to families who filed a habeus corpus case in Sri Lanka<sup>1</sup>. The 58 Division, which is named in the UN Investigation as accepting the surrenders, was led at the time by alleged war criminal, Major General Shavendra Silva, who has been promoted by the current Government to

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<sup>1</sup> See CHRD's excellent report Enforced Disappearance in Sri Lanka, Lessons from CHRD's Advocacy, 2015, <http://srilankachrd.org/assets/book-a.pdf>, which at P. 31 cites the army alleging "A substantial number of LTTE cadres and civilians fled to India by sea and later illegally migrated to West a[re] presently domiciled in Western countries. However their relatives pretend that they were abducted and killed by the Army.'

Also OISL (437) says the disappeared were last seen in the custody of the 58 Division.

Adjutant General of the Sri Lankan Army. Eyewitnesses indicated that Silva was present at the Wadduvakkal Bridge on 18 May and even shook hands with the LTTE political wing leaders who surrendered and shortly thereafter were summarily executed. Silva reported to General Jayasuriya who is also said by eyewitnesses to have been present at the Wadduvakkal Bridge watching the surrenders of LTTE cadres led by a Catholic priest, all of whom subsequently disappeared in the custody of the security forces. General Jayasuriya has been accused of alleged war crimes in 4 lawsuits filed by the ITJP in Latin America where he was Ambassador until he fled home to evade justice.

The ITJP's disappearance website is recreating the surrender list that the Sri Lankan Army is withholding. It currently contains **280** names and can be viewed online in Tamil and English at:

<http://itjp.bong.international/#lang=english> .

*"We urge anyone with information or photos to contact us by email in English or Tamil," said the ITJP's Executive Director Yasmin Sooka, "this is by no means a complete list or a perfect one but it is a start and what it reveals is that the extent of the crime is much larger than previously known."*

The ITJP concedes there could be some duplication in names because families report loved ones missing using their birth names while former comrades tend to use noms de guerre. The group says that is why it's important to add photographs where possible and urges members of the public to contact them regarding any corrections. The design of the site deliberately leaves grey boxes empty to signify that this is not a final list but rather a work in progress.

Each name is just a tiny glimpse of the human suffering that enforced disappearance leaves behind. The daughter of V. Balakumaran sent this message to be included on his page on the website:

*"I always wanted to be with you appa. Since April 2009, we have been living without you with a wounded heart. You are one of the most important tamil leaders which is the fact no one can deny. And I strongly assure that you are the best father who showed us how to live a simple life regardless of how famous a leader or a person is and lived by an example. You always wanted me to be independent, courageous and a strong girl who withstands anything. But I couldn't withstand the agony and depression after your disappearance. You are the strength which gives us every single reason not give up on any circumstances. We won't give up on you appa. We miss you so much which words can't explain. We strongly hope that one day you will fill our eyes with tears of joy with your presence. We also hope and pray for every family who lost their father, son daughter, or siblings to be re-unite soon.  
Your Ever loving Daughter".*

Those named on the ITJP list are believed to have been taken into the custody of the Sri Lankan Army on or around 18<sup>th</sup> May 2009 before they disappeared. Some have been reported as disappeared by their families in Sri Lanka. Witnesses are also in several countries abroad where

they have given sworn testimony to the ITJP about who they saw surrendering to the security forces<sup>2</sup>.

The ITJP's website is based primarily on 5 different lists - two from inside Sri Lanka and two collected abroad and a 2017 UN WGEID complaint list that is public<sup>3</sup>. What is concerning is that while there is some overlap between the lists it is not huge, indicating perhaps that some families of LTTE cadres are still frightened to report them missing or that the families are no longer alive to complain.

Particularly troubling is that it includes 29 children - several of them under 5 years of age - who disappeared on or around 18 May after surrendering with their parents.

*"Sri Lankan civil society needs with one voice to demand to know the plight of these children. Nine long years have gone by and their grandmothers and mothers should not be left alone to stand on the roadside demanding the truth while exposed to intimidation and threats from the security forces<sup>4</sup>,"* said Ms. Sooka.

On the final days of the war the Sri Lankan Army made loud speaker announcements urging Tamils to surrender, promising them an amnesty<sup>5</sup>. As the UN report<sup>6</sup> states, it is not relevant whether some of those who disappeared were LTTE fighters or not, because they had already passed into the custody of the armed forces and were *hors de combat*. We reproduce below the section of the UN OISL report on war-end disappearances.//

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<sup>2</sup> See also <http://www.white-flags.org> produced by the ITJP in May 2014.

<sup>3</sup> A/HRC/WGEID/111/1

<sup>4</sup> CHRDR reports that almost all the 14 families bringing habeus corpus cases have been threatened to drop their cases. P. 32. Enforced Disappearance in Sri Lanka

Lessons from CHRDR's Advocacy, 2015, <http://srilankachrd.org/assets/book-a.pdf>

<sup>5</sup> Corroborated by CHRDR in Colombo whose report says:

"On May 18, 2009, Sri Lankan security forces made public announcements calling all LTTE cadres to surrender, with a promise to grant general amnesty to those who did. The announcements stated that those who served for even one day should surrender into Army custody. Thereafter, each of the missing persons in the cases listed above surrendered into custody of the 58th Division of the Sri Lankan Army."

<sup>6</sup> OISL, 2015, para 286, A/HRC/30/CRP.2.

## BACKGROUND

## Extract from OISL Report (A/HRC/30/CRP.2)

**“Enforced disappearances at the end of the armed conflict**

**429.** *In spite of the Government’s persistent denials<sup>7</sup>, 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”<sup>8</sup> to the SLA.<sup>9</sup>*

**430.** *Some of these cases were reported to WGEID and reference to them is included in its annual reports of 2012 and 2014.<sup>10</sup> OISL received other testimonies, including submissions from people who allegedly witnessed the surrender of former LTTE cadres or civilians who have not been seen since<sup>11</sup>. 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.<sup>12</sup> 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 2009<sup>13</sup>.*

**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 with<sup>14</sup> a group of LTTE fighters who were hors de combat and non-military cadres<sup>15</sup> that had identified themselves to the SLA at Vadduvakal.<sup>16</sup>*

**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.<sup>17</sup> Some witnesses saw Father Francis and the group of LTTE cadres boarding buses east of the last*

<sup>7</sup> 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>

<sup>8</sup> 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.

<sup>9</sup> These cases may also be linked to the alleged extrajudicial executions described in the previous chapter.

<sup>10</sup> WGEID Annual report 2012, A/HRC/19/58/Rev.1 pages 111-113.

<sup>11</sup> WS on file. OISL also received a large number of submissions.

<sup>12</sup> 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.

<sup>13</sup> 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>

<sup>14</sup> WS on file

<sup>15</sup> WS on file

<sup>16</sup> WS on file

<sup>17</sup> WS on file

holding area.<sup>18</sup> 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 Sajeevan; 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 58<sup>th</sup> 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 and punish the wrongdoers." It therefore noted that "the launching of a full investigation into these incidents is an imperative."<sup>19</sup>

**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

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<sup>18</sup>WS on file

<sup>19</sup>LLRC report, paras 4.318-4.319.

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 “surrendees” is necessary, clarifying the fate of each one of them.”

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### **ITJP’s Chronology on Numbers regarding 18 May 2009 surrenders**

**2011:** Human Rights Watch reported on 20 cases<sup>20</sup>.

**2011:** The LLRC registered 53 LTTE cadres who surrendered during the final days of the war and were alleged to have disappeared.

**2014:** ITJP published a list of 110 names of individuals seen by eyewitnesses “surrendering” to the SLA on or around 18th May 2009. This was later increased to 143 names.

**2018:** ITJP publishes website with **280** names.

### **Various Numbers Cited for Missing/Disappeared in Sri Lanka**

**1994:** Three Commissions in Sri Lanka established 16,800 enforced disappearance cases.

**2015:** WGEID<sup>21</sup> said it had 5,750 outstanding cases (previously 12,341).

**2017:** 20,000 estimated missing after the war end, say Government estimates<sup>22</sup>.

**2018:** SCRML says 16,000 “missing” of whom 5,100 are from the security forces<sup>23</sup>.

This appears to be the number of complaints received by the ICRC<sup>24</sup>.

**2016:** The Paranagama Commission is said to have received more than 24,000 complaints<sup>25</sup>.

**2016:** The chairperson of the ONUR says over 65,000 missing since 1994<sup>26</sup>.

**2018:** Amnesty International says the disappeared number 100,000<sup>27</sup>.

**ends**

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<sup>20</sup> Sri Lanka: Account for Wartime Disappearances: More Than 20 People Last Seen in Army Custody Remain Missing, 7 April 2011, <https://www.hrw.org/news/2011/04/07/sri-lanka-account-wartime-disappearances>

<sup>21</sup> A/HRC/30/38, 10 August 2015

<sup>22</sup> New Indian Express, 20 July 2017, <http://www.newindianexpress.com/world/2017/jul/20/sri-lankan-president-signs-office-on-missing-persons-act-1631327.html>

<sup>23</sup> tweet @officialscrml Apr 18

<sup>24</sup> “The International Committee of the Red Cross (ICRC) claims to have received over 16,000 tracing requests since 1990, including approximately 5,200 from the families of missing military and police personnel”, IMADR submitted a written statement on “Enforced and Involuntary Disappearances in Sri Lanka” at the 33rd session of the Human Rights Council, <http://imadr.org/enforced-and-involuntary-disappearances-in-srilanka-hrc33-2016-ws/>

Also Sri Lanka: Report released on needs of families of missing persons, 26 July 2016, ICRC <https://www.icrc.org/en/document/sri-lanka-families-missing-persons>

<sup>25</sup> IMADR as above. Also media: <http://www.dailynews.lk/2016/08/26/local/91521>

<sup>26</sup> Reuters: Sri Lanka admits 65,000 missing from war, insurrection, 8 June 2016, <https://in.reuters.com/article/sri-lanka-rights-idINKCNOYU277>

<sup>27</sup> Mothers of Sri Lanka’s 100,000 ‘disappeared’ desperately looking for answers, 27 March 2018, ITV, <http://www.itv.com/news/2018-03-27/sri-lanka-civil-war-missing-tamil-president-sirisena-colombo-disappearing-amnesty-international-united-nations/> and Amnesty “Since the 1980s, Amnesty International estimates there have been at least 60,000 and as many as 100,000 cases of enforced disappearance in Sri Lanka.” <https://www.amnesty.org/en/latest/news/2017/04/sri-lanka-victims-of-disappearance-cannot-wait-any-longer-for-justice/>

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