

FEBRUARY 2021
SRI LANKA: BRIEFING NOTE 5

THE EMBLEMATIC CASES

"Not a single emblematic case has been brought to a successful conclusion or conviction."

Michelle Bachelet, 2021

DEFINITION

The issue of 'emblematic cases' arose from the OHCHR Investigation into Sri Lanka (OISL) report,¹ and following the transitional justice process that began in 2015. The 'emblematic cases' evolved from particularly egregious cases of gross human rights violations. They included enforced disappearances outside the conflict area of the north-east of the island,² the assassinations of parliamentarians and a journalist,³ massacres during the early period of the civil war⁴ and in the east, as well as some post-war incidents involving the security forces that were not conflict-related.⁵ While some of these cases were the subject of police investigations under the previous Government, they remain unresolved. The emblematic cases at different stages also included the May 2009 end of war violations, such as torture, executions and disappearances, covered in detail in the OISL report⁶ and some international cases.⁷

ENTRENCHING IMPUNITY

In only two of the UN's approximately 18 'emblematic cases' in Sri Lanka was there a conviction – the Vishwamadu rape case and the Mirusuvil massacre case – the Vishwamadu rape case was recently overturned on appeal, and an Army officer convicted in the Mirusuvil massacre case pardoned.⁸ The convictions at the time were regarded as ground-breaking and were hard won, but the ease with which these justice achievements were undone is disturbing and shameful.

PLAINTIFFS & WITNESSES ENDANGERED

Unfortunately witnesses and plaintiffs have been put at grave risk to their lives as a result of the failure to achieve sustained reform. The ITJP is aware of at least 7 witnesses and complainants in these 'emblematic cases' who have been forced to flee Sri Lanka after 2015 and claim asylum abroad because of their participation in Sri Lanka's failed transitional justice process. That is apart from family members of many of the other 'emblematic cases' who sought asylum abroad in earlier years. For example, several family members and witnesses in the Trinco 5 and the ACF killing cases were forced to flee abroad, as well as the families of Isaipriya and the 'White Flag' incident victims. Seeking justice is a risky business in Sri Lanka. It is far more likely that a plaintiff or witness will end up forced to flee the country than expose a perpetrator and go to jail. Conflicts of interest in terms of investigators assigned also put witnesses at grave risk -

for example in one case the brother of the accused was assigned to the investigating police unit.⁹

ALLEGED PERPETRATORS PROTECTED

Some suspects in police investigations have been protected by being offered diplomatic postings abroad. The suspect in the Weliveriya water protest was sent abroad as a diplomat.¹⁰ The suspect in the Lasantha Wickrematunge killing was also offered a diplomatic posting.¹¹ Both were promoted in the Army despite not having had their names cleared.¹² In several cases (Lasantha Wickrematunge, Sivaram), police officers are alleged to have covered up vital evidence. Suspects in murder cases have been allowed by the courts to contest elections and attend parliament from jail¹³ – one convict on death row was even allowed to take his seat in parliament, claiming his conviction had been politically motivated.¹⁴ The role of commanding officers has also never been thoroughly investigated.¹⁵

ABSCONDING SUSPECTS

Several alleged suspects in both criminal and civil cases have successfully evaded justice by fleeing abroad. In the case of the killing of parliamentarian Nadarajah Raviraj, a former Sri Lankan policeman¹⁶ was named as a suspect but fled to Australia. Another suspect, Shivakanthan Vivekanandan – alias Charan, was said to be in Switzerland.¹⁷ A warrant was reportedly issued for the arrest of a witness now in custody in Paris in the disappearance case of Prageeth Eknaligoda.¹⁸ At one point in the Vithiya rape case, an accused suspect known as Swiss Kumar reportedly tried to escape custody and flee to Switzerland. In 2019 a suspect in the Weliveriya case was reported by NGOs to be absconding in the UK.¹⁹

Even when remaining in Sri Lanka, some suspects manage to evade court summons. The former Navy Commander, Admiral of the Fleet Wasantha Karannagoda, did not respond to multiple summons to appear in court and yet²⁰ was photographed at a sports event sitting next to the Secretary of Defence²¹ and at past Independence Day events.²²

FAILURE TO ADDRESS PATTERNS AND LINKS IN 'SYSTEMIC CRIMES'

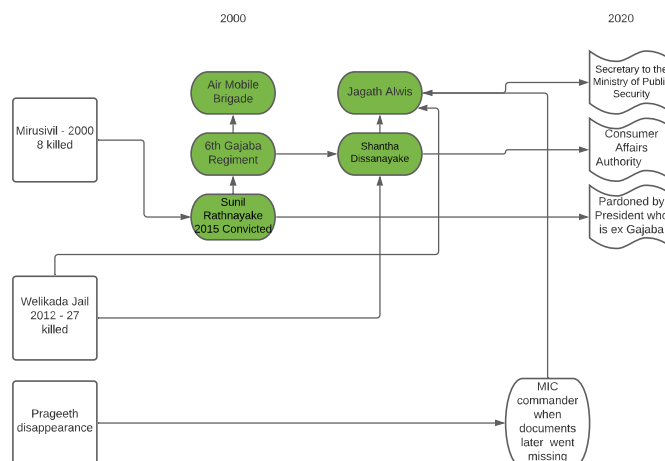
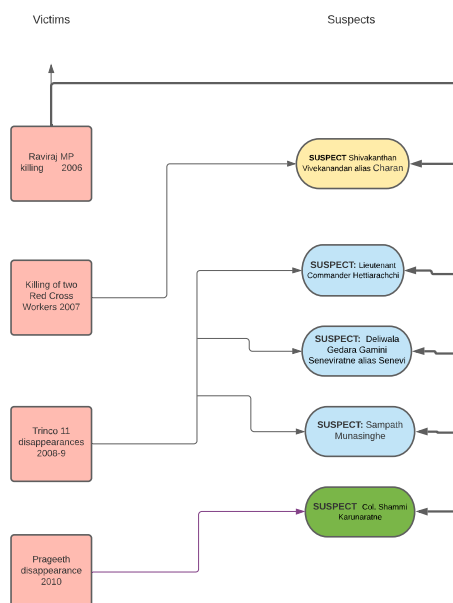
It is striking that the same suspects' names come up in multiple emblematic cases but this is rarely commented on in analysis of the individual cases, as shown below. If nothing else, this highlights the risks of failing to investigate promptly, which can lead to further violations. It also shows the failure to consider the systemic organisation of the crimes, including patterns and trends, and a tendency to treat these crimes as individual aberrations rather than systematic.

Navy & Tamil paramilitaries in Colombo: There were for example, 5 suspects named in the killing in 2006 of Tamil National Alliance (TNA) Member of Parliament (MP) Nadarajah Raviraj – though they were later all acquitted

in trial. Of these, 3 were naval officers who later became police suspects in the 2008-9 'Trincomalee 11' abductions in Colombo. Another was a Tamil eastern paramilitary who went on to be named in connection with the killing of two Red Cross workers in 2007. While the military officer named in the MP's killing case was later named as a suspect in the abduction of the prominent cartoonist Prageeth Eknaligoda in 2010. The police investigation into Prageeth's disappearance said after being abducted that he had been taken from Giritale Army Camp to Akkaraipattu in the East to be killed, which implies involvement of eastern Tamil pro-Government paramilitaries.²³ While many of the individuals implicated and charged have been acquitted, an inference must be drawn from the fact that their names surface regularly in police investigations of these emblematic cases.

Murder and sexual violence: Another example of multiple cases linked to one suspect is that of Kandasamy Jegatheeswaran (alias Kiruba²⁴), a suspect belonging to the pro-Government Tamil paramilitary group, the Eelam People's Democratic Party (EPDP). He was named as suspect in the 2000 killing of BBC journalist, Nimalarajan Mylvaganam, in Jaffna. In 2004 and then again in 2012, Jegatheeswaran was alleged by the media to have been involved in attempted assaults, before months later killing and raping a child (for which he was convicted in 2017 and is currently appealing). Witnesses in this latest case have faced appalling reprisals which cannot be disclosed for witness protection reasons. It is also worth noting that the EPDP leader has been a minister several times since 2000 despite being an accused indicted in a murder case in India, and despite his party being named in connection with several grave violations of human rights in the OISL investigation and the conviction of his party members for murder.

Murder in the north, in prison and enforced disappearance: In the Mirusuvil killings a soldier was convicted in December 2000 after a 13 year trial for the murder of eight Tamil Internally Displaced People (IDPs); the victims included three children amongst whom was a 5 year old whose body showed signs of torture. The soldier, who was later pardoned, was part of the 6th Gajaba Regiment and his Commander, Shantha Dissanayake, is alleged to have been involved in crushing the jail protest in Welikada in 2012, which resulted in 27 deaths. Dissanayake's senior officer at the time of the 2000 massacre was Jagath Alwis who later rose to become Military Intelligence Commander at a time when key documents pertaining to the investigation of the disappearance of the cartoonist Prageeth Eknaligoda allegedly went missing.²⁵ Dissanayake has been rewarded with a civilian job in the new Government, while Alwis has recently been appointed as the Secretary to the Ministry of Public Security in charge of the police.²⁶



END OF WAR VIOLATIONS

Killing of Col Ramesh, May 2009	OISL and Paranagama Report cite reasonable grounds to say he was executed.	Never investigated.
Killing of 12 year old Balachandran Prabhakaran, May 2009	OISL cites reasonable grounds to say he was executed. Paranagama Report said needed investigating.	Never investigated.
Killing of Shobana Dharmaraja alias Isaipriya, May 2009	OISL and Paranagama Report cite reasonable grounds to say she was executed.	Never investigated.
Killing of Balasingham Nadesan, Vineetha Nadesan and Seevaratnam Puleedevan ('White Flag' incident)	OISL and Paranagama Report cite reasonable grounds to say they were executed.	Never investigated.
Disappearances and Habeus Corpus Cases	Disappearances at war end.	No Information; cases in court in Sri Lanka on appeal or pending.

ABDUCTION, TORTURE & SEXUAL VIOLENCE

Tamil Rehabilitation Organisation, 2006	7 aid workers abducted, tortured, raped and disappeared.	Complaints to police filed; HRCSL interviewed survivors; but not investigated.
Professor Sivasubramaniam Raveendranath, 2006	Vice Chancellor of the Eastern University abducted and disappeared.	Sisira Mendis said statements recorded by police but nothing thereafter.
Trincomalee 11 disappearances, 2008-9	Abduction for ransom from Colombo by Navy and disappearance.	Suspects released on bail and complained to the presidential commission on political victimisation.
Vishwamadu Rape Case, 2010	Gang Rape of a Tamil woman.	2015: four Sri Lankan soldiers from the 572 Brigade were convicted of gang raping a Tamil woman from Vishwamadu in 2010 and sentenced to 25 years in prison. In October 2019 the soldiers were acquitted on appeal.
Sivaloganathan Vithiya, 2015	18-year-old schoolgirl raped and killed.	Seven men convicted; appealing.
Mannar Rape Case, 2001	Rape of two Tamil women in custody.	In 2006 the Attorney General's department decided to drop the rape charge and reduce it to a torture charge. In 2008 proceedings stopped after one of the women went missing.

PROTESTORS

Welikada prison incident, 2012	27 killed.	Two remaining suspects complained to the presidential commission on political victimisation; third released.
Weliweriya / Rathupaswala Water Protest, 2013	3 Sinhalese killed and 45 injured.	4 military charged; case pending.

JOURNALISTS

Nimalarajan Mylvaganam, killed 2000	BBC Sinhala Service	Investigation abandoned.
Dharmaratnam Sivaram aka Taraki, killed 2005	Tamil Net, among others.	Investigation abandoned.
Subramaniam Sugirtharajan, killed 2006	Tamil daily 'Sudar Oli'	No Investigation.
Jeyaprakash Tissainayagam, Vettivel Jasikaran and Vadivel Valarmathy, Detained and Tortured 2008 onwards	Outreach Multimedia and others	Charged under PTA but charges withdrawn against Jaasikaran and Valarmathy on condition they withdraw their fundamental rights petition regarding torture. Tissainayagam sentenced to 20 years RI in prison; received presidential pardon due to international pressure.
Isaipriya (Shobana Dharmarajah), killed 2009	LTTE TV station	No Investigation.
Lasantha Wickrematunge, killed 2009	Sunday Leader editor	Case postponed till 4 June 2021.
Prageeth Eknaligoda, abducted 2010	Cartoonist	Two Ongoing cases; next hearing 4 March 2021 in one case ²⁷

PARLIAMENTARIANS

Chandra Nehru Ariyanayagam, killed 2006	Tamil Parliamentarian	Police lost his statement identifying killers.
Thiyagarajah Maheswaran, killed 2008	Tamil Parliamentarian	LTTE cadre convicted; appealing, saying he was forced to confess under torture.
Joseph Pararajasingham, killed 2005	Tamil Parliamentarian	5 suspects from pro-Government Tamil paramilitary acquitted in 2021.
Nadarajah Raviraj, killed 2006	Tamil Parliamentarian	An all-Sinhala jury unanimously acquitted all five suspects, who included security force members. Appeal pending.
Kiddinan Sivanesan, killed 2008	Tamil Parliamentarian	Not investigated.

WAR TIME MASSACRES

Kiliveddy/Kumarapuram Massacre, 1996	26 Tamils killed (14 children).	All Sinhala jury acquitted 8 military suspects; appeal pending.
Mirusuvil, 2000	8 Tamils killed (3 children).	One soldier convicted; pardoned in 2020 by President Gotabaya Rajapaksa.
Trinco 5 Case, 2006	Killing of 5 Tamil students	In 2019 a court acquitted all 13 defendants.
ACF Killings, 2006	Killing of 17 Action Contre le Faim (ACF) workers.	Investigation stalled.

ENDNOTES

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- 1 Whose temporal mandate was 2002-11.
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- 2 Prageeth Eknaligoda (Sinhala journalist abducted post-war in south); abduction for ransom in Colombo of 11 men.
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- 3 Tamil National Alliance MPs in 2005 and 2006, Lasantha Wickrematunge
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- 4 1996 Kiliveddy massacre case, 2000 Mirusuvil case
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- 5 2012 jail protest, 2013 water protest.
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- 6 Executions of Colonel Ramesh, Isaipriya, Balachandran and white flag political wing surrenders. They were cited in 2014 by OHCHR but not thereafter.
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- 7 The Jagath Jayasuriya case in Latin America and the German case regarding the assassination of Lakshman Kadiragama.
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- 8 A/HRC/46/20, §51 on Sunil Ratnayake and the Mirusuvil case. <https://archive.ceylontoday.lk/print-more/42442> on Vishwamadu.
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- 9 For example, in the Welikada Jail case, an accused is former Prisons Commission Emil Ranjan Lamahewa, whose brother is Assistant Superintendent of Police, Merrill Ranjan Lamahewa, currently assigned to the Criminal Investigation Department (CID).
<https://undocs.org/pdf?symbol=en/A/HRC/43/NGO/112>
<https://www.newsfirst.lk/2020/09/17/podi-lassie-named-as-suspect-in-death-threat-case-remanded-until-sept-25th/>
<https://www.newsfirst.lk/2020/07/21/garnier-banister-false-complaint-case-postponed-to-september/>
<https://www.colombotelegraph.com/index.php/the-bent-cops-entrusted-with-fabricating-a-case-to-arrest-shani-abeysekera/>
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- 10 <https://sri.lankabrief.org/2014/05/sri-lanka-brigadier-who-ordered-shooting-at-weliwariya-protestors-given-a-diplomatic-post/>
https://itjpsl.com/assets/ITJP_Jagath_Dias_dossier-final.pdf reference.
Posted as Defence Attaché to Turkey in 2014. <https://www.mgk.gov.tr/en/index.php/sri-lanka-ambassador-to-ankara-bharathi-wijeratne-visits-secretariat-general-12112014>
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- 11 <http://www.ft.lk/News/Alleged-death-squad-leader-reinstated-in-special-team-under-Army-Chief/56-678065>
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- 12 Prabath Bulathwatte: <https://cpi.org/2019/05/sri-lankan-army-reinstates-official-suspected-in-l/>
SADAD Gunarwardane <https://www.army.lk/news/newly-promoted-majors-general-biggest-first-group-receive-commander-s-blessings>
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- 13 <http://www.newswire.lk/2020/08/19/parliament-to-convene-with-223-mps-murder-convict-premalal-murder-suspect-pillyan-to-attend/>
<https://ceylontoday.lk/news/court-permits-pillyan-to-contest-polls>
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- 14 <https://www.theguardian.com/world/2020/sep/08/murderer-on-death-row-sworn-in-as-sri-lankan-mp-premalal-jayasekara>
http://www.dailymirror.lk/breaking_news/My-imprisonment-was-an-act-of-political-revenge-Premalal/108-195444
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- 15 For a full analysis see ITJP's Navy report, 2019.
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- 16 <https://www.smh.com.au/national/former-sri-lankan-cop-wanted-over-assassination-linked-to-aussie-ecoconsultancy-business-20151222-glt8n.html>
<http://www.lankaenews.com/news/980/en>
Malani Ventura who is harbouring and hiding him in Australia has many aliases – Malani Alles, Malani Saba, and Malani Kanagasabapathy. She has until last October been a member of the Australian-SL chamber of commerce, and resigned thereafter Malini Alles-Ventura
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- 17 <https://reliefweb.int/report/sri-lanka/sri-lanka-offers-reward-nab-aid-worker-killer>
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- 18 CPA, Revisiting Ten Emblematic Cases in Sri Lanka: Why Justice Remains Elusive, 20 January 2021,
<https://www.cpalanka.org/revisiting-ten-emblematic-cases-in-sri-lanka-why-justice-remains-elusive/>
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- 19 Indika Sampath Imaduwa according to CPA (op cit).
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- 20 http://www.colombopage.com/archive_20A/Feb24_1582528480CH.php
This report said by June he had not appeared in court: http://www.dailymirror.lk/print/front_page/CA-stays-Karannagodas-case/238-190679
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- 21 <https://www.lankanewsweb.net/67-general-news/57757-Karannagoda-spotted-with-Defence-Secretary-in-Battle-of-the-Maroons->
And in August met the new Navy Commander: <https://news.navy.lk/eventnews/2020/08/11/202008110905/>
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- 22 <https://www.himalmag.com/the-long-wait-for-justice-sri-lanka-2020/>
<https://itjpsl.com/reports/the-navy-a-collective-blind-eye>
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- 23 CID tells Homagama Magistrate: Evidence shows that Eknaligoda was killed in Akkaraipattu, Daily News, 10 Feb. 2016, <http://www.dailynews.lk/2016/02/10/security/cid-tells-homagama-magistrate-evidence-shows-ekneligoda-killedakkaraiattu? page=2>
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- 24 <https://groundviews.org/2012/04/02/the-rape-of-a-13-year-old-and-paramilitary-presence-in-jaffna/>
"Villagers said that Jegatheswaran had been former EPDP Commander, Napoleon's right hand man, and also a suspect in the murder of Jaffna based Journalist Mylvaganam Nimalrajan. In addition to the two above mentioned cases, villagers claimed that he had also attempted to abuse two other young girls, a mere two days prior to this incident."
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- 25 <https://itjpsl.com/assets/Major-General-K-J-Alwis-dossier.pdf>
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- 26 <https://colombogazette.com/2020/12/10/military-officer-appointed-public-security-ministry-secretary/>
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- 27 HRW report. Open Wounds and Mounting Dangers, February 2021.
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