

# Elusive Justice & Emblematic Cases in Sri Lanka

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Edited by  
**Bhavani Fonseka**

Centre for Policy Alternatives

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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## **A Timeline of Sixteen (16) Emblematic Cases**

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## INTRODUCTION

Bhavani Fonseka

In February 2023, victims who had filed habeas corpus cases in the High Court in Vavuniya had a small victory in their case with the judge making an order for the military to produce their family members who had surrendered to the military in 2009.<sup>1</sup> Such an order is important amidst multiple setbacks in the victim's search for their missing loved ones. Nearly 14 years after their surrender, families continue to struggle to get answers with the small victory in Court being a testament to the perseverance of victims and their lawyers. The litigants in Vavuniya are one of many who have engaged with the Sri Lankan criminal justice system in the search for answers to what happened to their loved ones and in the pursuit of justice. As with many cases and the experiences of victims, multiple setbacks are faced with justice.

The State's response to violence is characterised by denials and with different tactics used to delay justice processes. Victims have also had to face multiple indignities when searching for answers and for justice ranging from denial to intimidation to

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<sup>1</sup> 'Court orders Army again to produce surrendered LTTE members', <<https://english.theleader.lk/news/3832-court-orders-army-again-to-produce-surrendered-ltte-members#:~:text=A%20court%20has%20once%20again,the%20failure%20to%20do%20so>> accessed on 12 March 2023

harassment and surveillance. Despite this, many victims have persevered in the struggles, from filing cases to vigils to protests to some taking the cases internationally. In several instances they have had to face mounting challenges to mourn their dead that has included the ban on memorials and events that remember the dead and the destruction of cemeteries of former combatants. The varied tactics used by the authorities targeting some victims, refusing to recognise their loss and their efforts at finding the truth and justice has contributed to a 'hierarchy of grief'.<sup>2</sup>

Yet, despite the efforts to delay justice and deny past abuses, the perseverance of the victims in their pursuit for justice has seen decades long agitation and mobilisation by victim communities that has resulted in the formation of the Mothers Front to other initiatives including families in the north continuously protesting for over 2000 days amidst threats, intimidation and other challenges.<sup>3</sup> These efforts have been complemented by sections of civil society who have kept the issue of human rights and the need for justice alive with agitation, litigation, advocacy, memorialisation, documentation and other efforts. Efforts such as the annual events to remember enforced disappearances, the 2000 days of activism by families of the disappeared and the Justice Walk in Batticaloa are some of the efforts at the

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2 Judith Butler, *Precarious Life: The Power of Mourning and Violence* (Verso 2004); Judith Butler, *Frames of War: When is Life Grievable?* (Verso 2010)

3 Chulani Kodikara, "What is the Question?" *The Matter of Surrendeeds and Gotabaya Rajapaksa's Response*, (Groundviews October 2019) <<https://groundviews.org/2019/10/17/what-is-the-question-the-matter-of-surrendeeds-and-gotabaya-rajapaksas-response/>> accessed on 11 August 2021

community level that has kept issues alive, a reminder of the continuing struggles faced in the pursuit of justice.

Sri Lanka's cycles of violence have had a devastating impact in the lives of thousands across the island, with violations documented over the decades exposing extra judicial killings, enforced disappearances, abductions, sexual violence, torture, displacement and other forms of violence that has impacted all communities. Documentation also highlights allegations faced by multiple actors linked to the State and non-State actors and the successive Governments who were pressured to initiate investigations with limited to no progress with such efforts. The cases that did progress through the criminal justice system is due to the perseverance of victims, their lawyers, civil society and others. Their perseverance in keeping attention on the violations and pressure to get to the truth and justice has had an impact with a few cases proceeding to trial and subsequent convictions of perpetrators.

One is the gang rape and murder of Krishanthi Kumaraswamy and subsequently the murder of her mother, brother, and neighbour who went in search of her.<sup>4</sup> This case resulted in a conviction of military personnel.<sup>5</sup> Another case known as the Embilipitiya case involved the enforced disappearance and killing of schoolboys from Embilipitiya in the South in 1989-1990.<sup>6</sup> Nearly a decade after the incident, several were convicted

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4 Kumari Jayawardena & Kishali Pinto-Jayawardena (eds.) *The Search for Justice: The Sri Lanka Papers* (1st edn, Zubaan 2016)

5 Somaratne Rajapakse others v. Hon Attorney General [2010] 2 Sri LR 113

6 Discussed in detail in the chapter authored by Mirak Raheem, "Addressing

of the gruesome disappearance and murder of the schoolboys.<sup>7</sup> Both these cases progressed during the early years of then President Chandrika Bandaranaike Kumaratunga's presidency where agitation by victims and civil society opened the space for justice in Sri Lanka.<sup>8</sup>

Despite the few cases resulting in convictions, other cases did not have the same success. In the case known as the Vishvamadu is an example where justice remains elusive to the victims. In this case, after several delays, four soldiers were convicted of a gang rape and sexual assault<sup>9</sup> but were subsequently acquitted by the Court of Appeal.<sup>10</sup> Further setbacks with justice are seen when the Executive provided a Presidential pardon to a convict. In what is known as the Mirusuvil massacre, an army Staff Sergeant was convicted for the massacre of eight civilians, including two children, that occurred in 2000. After several delays with the trial, the accused was convicted in 2015 with the conviction affirmed by the Supreme Court in 2019.<sup>11</sup> In 2020, a Presidential

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the Missing Elements of Justice for the Disappeared in Sri Lanka: Investigating Unmarked Gravesites and the Identification of Human Remains”

7 H.C. Case No. 121/1994, High Court of Ratnapura, High Court Minutes, 23 February 1999; International Commission of Jurists, Authority without Accountability: The Crisis of Impunity in Sri Lanka (ICJ 2012) 168-169

8 Chulani Kodikara, ‘An interview with Prashanthi Mahindaratne: The Krishanthi Kumaraswamy Case’ in Kumari Jayawardena & Kishali Pinto-Jayawardena (eds) *The Sri Lanka Papers* (Zubaan 2016)

9 P. Shantha Subasinghe and Others v. Hon. Attorney General (the Vishvamadu Case) (C.A Case No. 250-252/2015; H.C. Jaffna Case No. 1569/2012)

10 See case note later in the publication; Also, Danushka Medewatte, Neloufer De Mel, Sandani N. Yapa Abeywardena & Ranitha Gnanaraj, ‘Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka –the Vishvamadu Case’ (2022) *The Gender, Justice and Security Hub*

11 Sunil Ratnayake v Attorney General (Mirusuvil Case) (HC Colombo

pardon was given to the convict, with it demonstrating a new setback in the pursuit of justice in Sri Lanka.<sup>12</sup>

The above are some of the cases that progressed to the trial stage. Many others faced setbacks with investigations and inquiries with no immediate prospect of proceeding to a trial. Cases such as what is known as the Trinco Five massacre, ACF massacre and the Navy 11 abductions are some of the well-known cases that have faced setbacks at the investigations stage.<sup>13</sup> Several others have faced similar predicaments with documents contained in the publication demonstrating the numerous setbacks faced in the criminal justice system. These cases are identified as ‘emblematic cases’ for the numerous setbacks faced in the pursuit of justice in Sri Lanka.<sup>14</sup>

Many of these cases and agitation by victims and civil society have been in a context where those challenging the State is seen as a traitor and vilified for their efforts of uncovering the truth. Efforts over the decades have been countered by the State and

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1092/2002; SC. Appeal No. 19/2003; SC 01/2016)

12 Fundamental rights applications are presently before the Supreme Court challenging the presidential pardon in this matter (SC FR 105 & 101/2020). See, interview with Mr. Ratnavale & the chapter authored by Kushmila Ranasinghe, “Dystrophic Justice? A Comparative Analysis of the Legal Proceedings Related to the Bindunuwewa and Mirusuvil Massacres”

13 See the timeline in the publication for more information & the chapter authored by Bhagya Samarakoon, “A Tale of Two Governments: An Overview of the Lack of Will to prosecute in Several Emblematic Cases”

14 Emblematic cases are identified as cases that face multiple challenges in the Sri Lankan criminal justice system. For more information, see, the timeline in the publication & Bhavani Fonseka, ‘Emblematic Cases Expose the Long Road to Justice in Sri Lanka’, (Just Security February 2021) <<https://www.justsecurity.org/74866/emblematic-cases-expose-the-long-road-to-justice-in-sri-lanka/>> accessed on 12 November 2022

nationalist forces who have used terms such as ‘sovereignty’, ‘threats to the motherland’ and ‘saving the war hero’ to push back on efforts at accountability. These campaigns have had an impact in creating confusion and apprehension among the public, fuelling misconceptions that justice can threaten Sri Lanka’s sovereignty and stability. What is often ignored or misunderstood is the fact that accountability for past abuses can address impunity and strengthen the rule of law. Unwillingness to address accountability will continue to fester a climate where alleged perpetrators feel their conduct is acceptable and they are entitled to continue with their abusive practices, thus, legitimising certain practices. In Sri Lanka, rather than facing accountability for their actions, they were promoted to key decision-making positions.

Such practices provided a fertile context for individuals to operate above the law. It was also against this backdrop that economic crimes occurred in Sri Lanka. The mismanagement and policy incoherence of recent years and mounting reports of economic crimes in Sri Lanka has exposed the democratic backsliding that is due to authoritarian governance and impunity in Sri Lanka. These also highlight the link impunity has with past human rights abuses and economic crimes and why addressing impunity through accountability and reforms can commence a process of reckoning and rebuilding.

### **Present publication**

The present publication examines several themes and cases when looking at emblematic cases and setbacks with justice in

Sri Lanka. A common thread among the chapters is the varied methods used to delay justice and deny past abuses.

Dr. Chulani Kodikara's chapter discusses the long journey taken by Sandya Ekneligoda in obtaining answers and justice for the enforced disappearance of Prageeth Ekneligoda. It traces the fate of the habeas corpus writ application filed in relation to the disappearance of Prageeth Ekneligoda, journalist and cartoonist, in January 2010, by his wife and two sons. The chapter shows ways in which the criminal prosecution of agents of the State can become a spectacle of both the working and unworking of the rule of law in post-war Sri Lanka.

Next is an interview with Sandya Ekneligoda who shares her experiences in the pursuit for truth and justice and the numerous setbacks and challenges she, her family and lawyers have faced. The interview speaks to the resilience of Sandya Ekneligoda despite the setbacks and her determination to obtain the truth and justice.

Amra Ismail's chapter uses eight instances when journalists were targeted for their professional work and the challenges in obtaining justice that have entrenched impunity in Sri Lanka. The chapter examines the reasons for impunity and steps that can be taken to provide redress.

Bhagya Samarakoon examines how the Governments headed by former President Mahinda Rajapaksa and former President Maithripala Sirisena handled allegations of violations and



its impact. The chapter discusses various tactics at play that delay justice such as the manipulations of the court processes, intimidation and harassment of witnesses and victims, destruction of evidence being some of the factors that have contributed to setbacks with justice.

The next chapter by Kushmila Ranasinghe looks at two emblematic cases – the Bindunuwewa and Mirusuvil massacres and identifies procedural and substantive legal issues which led to the similarities and differences in the trajectories and outcomes of these two cases. The chapter also examines the role of the media and public perceptions with the massacres and highlights the many setbacks that contribute to why justice remains elusive.

Next is an interview with senior lawyer, Mr. Ratnavale that provides a glimpse into the experiences of lawyers who appear in the interest of victims and the multiple challenges in obtaining justice. The interview examines several cases handled by Mr. Ratnavale and team, and ongoing challenges in the criminal justice system.

The chapter by Sarala Emmanuel, Amara and Saradhadevi captures reflections of three women in Batticaloa who were involved in supporting families whose children were abducted or forcibly recruited by armed groups during the period 2002 – 2008. The chapter discusses the gendered experiences, State complicity, challenges to accountability, and negotiations and resistance from women. The paper also explores processes that

were important to keep movements and collective spaces going to continue resistance to child recruitment, abduction, and disappearance. Finally, the chapter reflects on accountability, and the meaning of loss at the individual and community level, and what a broader truth-seeking might look like, more than a decade later.

The next chapter by Mirak Raheem explores the Embilipitiya Case where several schoolboys were abducted and disappeared by local actors and military, and the successful prosecution of perpetrators. The cases discuss the many hurdles encountered in the justice system, the possibilities and the limitations of the judicial system with regards to addressing disappearances in Sri Lanka and the pursuit in obtaining answers.

The publication contains several emblematic case notes that speak to developments around these cases. These case notes are meant to assist the reader to understand the process each case has taken in the criminal justice system and the setbacks faced. The case notes are complemented by a timeline of Sixteen (16) emblematic cases that takes the reader by way of a timeline as to key events around the respective cases.

## **Acknowledgements**

The work on transitional justice in Sri Lanka and the pursuit of truth and justice has spanned decades largely attributed to the perseverance of a range of actors from victims, local communities, civil society, lawyers, media, and many others. It

is the relentless work of so many that has kept attention on emblematic cases and the challenges faced in obtaining justice. The present publication relied on the previous work done that assisted in highlighting often long and challenging efforts at justice. This publication would not be possible if not for the tireless work of so many who worked on the cases in numerous ways.

The publication is enriched by the contributions of all the authors who have shown through their chapters the numerous setbacks faced in obtaining justice in Sri Lanka. A big thank you to all who patiently worked on their chapters despite the unexpected developments in Sri Lanka including the upheaval of an unprecedented crisis and related developments.

The publication builds on previous work done by the Centre for Policy Alternatives (CPA) in highlighting the challenges that contribute to a long list of emblematic cases and impunity in Sri Lanka. Kushmila Ranasinghe and Bhagya Samarakoon provided invaluable assistance with research and compiling the timeline and case notes. Acknowledgements are also due to Senal Senevirathne for assisting with copy editing the publication and to Noopura Liyanage for formatting the document. This publication would not have been possible if not for the support from Dr. P. Saravanamuttu, Harshini Amarasinghe and other colleagues at the CPA.

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## **The Prageeth Ekneligoda Disappearance Case: Entanglements of Law and Politics**

**-Dr. Chulani Kodikara**

Prageeth Ekneligoda, journalist, cartoonist and political activist, disappeared on 24 January 2010. The following day, Sandya Ekneligoda, his wife filed a complaint at the Koswatte police station. When the police took no interest to conduct an inquiry into the case, she and her two sons filed a habeas corpus application on 19 February 2010, in the Court of Appeal, citing the Deputy Inspector General of the Criminal Investigation Department, the Officer in Charge of the Homagama police, the Inspector General of the Police, the Attorney General (AG) and Prageeth Ekneligoda as respondents. The Court of Appeal referred the matter for investigation to the Magistrate's Court of Homagama. In November 2019, after more than 9 years of inquiry and more than 300 court hearings at the Homagama Magistrate's Court, the Attorney General indicted 9 military intelligence officers before a special Trial- at- Bar in relation to the disappearance of Prageeth Ekneligoda. This case is still ongoing. In this chapter, I trace the trajectory of this case through three different governments, the second Mahinda Rajapaksa government (2010 – 2015), the Maithripala Sirisena and Ranil Wickremasinghe Government or United Front for Good Governance (UFGG) (2015 – 2019) and the Gotabaya Rajapaksa Government (2019 – 2021).



I narrate the legal proceedings of this case chronologically and in some empirical detail, yet selectively in order to illuminate the way in which the post-war criminal trial can be made into a highly politicised spectacle both of the working and unworking of the rule of law. If as Lawrence Douglas argues, a trial can be staged as a spectacle of legality (2001), it is possible that it is also staged as its inverse, as farce or travesty, where it is stripped of all veneer of objectivity, impartiality and legal nicety. Indeed, can the trial be staged as a Kafkaesque drama to convince, persuade or enthrall the audience of the impossibility, the futility and the pointlessness of pursuing justice through the courts? I argue that the way in which the Mahinda Rajapaksa Government and the Gotabaya Rajapaksa Government prosecuted this case was/ is indeed intended to convey and reveal the power of the State to undermine, compromise and weaken the authority of law and as a spectacle of impunity. The UFGG on the other hand used its political power to ensure that the case made progress, arresting over 11 military intelligence officers for the abduction and disappearance of Prageeth Ekneligoda. I argue that this case is illustrative of the way in which law and politics is entangled both in the denial and delivery of justice.

### **2010 – 2015 Performing the Rule of Law as Travesty or Farce**

At the time of his disappearance, Prageeth Ekneligoda was working with Lanka e-news, a web-based news portal critical of the regime. He was also actively involved in the presidential election campaign of Sarath Fonseka. Fonseka, the ex-army commander who spearheaded the defeat of the Liberation Tigers

of Tamil Eelam (LTTE), had by that time fallen out of favour with Rajapaksas, and had come forward to challenge President Rajapaksa's bid for a second term in office at elections to be held on 26 January 2010, two days after Prageeth's disappearance. In addition, Ekneligoda was working on a collection of cartoons titled 'Family Tree' about the nepotism and corruption of the Rajapaksa family. Several months prior to his disappearance, on 29 August 2009, Prageeth was abducted for the first time, by a group of unknown masked men, interrogated and released. His captors told him that "they had made a mistake".

Because of Ekneligoda's status as an independent journalist and political activist, from the outset the case attracted considerable attention of the international community, opposition political parties and civil society actors; this is not normally the case in a country where tens and thousands have disappeared. A number of international organisations condemned his disappearance and circulated appeals calling for truth and justice. A number of opposition members raised the matter in Parliament. However, the criminal investigation into the habeas corpus writ application filed by Ekneligoda's family made little progress.

The writ of habeas corpus is one of the oldest criminal remedies available to families of those abducted, unlawfully detained or disappeared by the State. The writ allows the applicant to bypass the police and ask the court to intervene in a complaint relating to the abduction, detention or disappearance of a person by ordering those who are considered responsible, to produce that person in court. On the failure to produce, the court

can order an investigation to be conducted by a Magistrate's Court. In the Ekneligoda Case, the initial hearing at the Court of Appeal was repeatedly postponed due to non-co-operation from State officials. It was only in August 2011, that the hearing commenced. The Court of Appeal then sent the matter for inquiry to the Homagama Magistrate's Court where further delay and denial became the order of the day. Even though the purpose of a habeas corpus inquiry is to ascertain whether the State has committed a crime, in habeas corpus inquiries the State continues to be represented by state counsel from the Attorney General's Department ("AG's Department"). Moreover, in the glare of intense local and international scrutiny, and Sri Lanka being placed on the agenda of the Human Rights Council in 2011, denial of responsibility quickly turned into a spectacle of duplicity and deceit of unprecedented visibility enacted not just inside the courthouse but outside as well.

By 2011, a number of political leaders as well as bureaucrats began to claim that Ekneligoda was alive and well in a foreign country. In November 2011, Mohan Peiris, the country's Attorney General ("AG") and legal advisor to the President and Cabinet of Ministers, in his official presentation before the United Nation's Committee on Torture ("CAT"), initially told the Committee that an investigation into the abduction of Prageeth Ekneligoda is being conducted. Subsequently, in the question and answer session, he took a different line, claiming that the Government of Sri Lanka possessed information that "Mr. Ekneligoda has taken refuge in a foreign country", and that the campaign to secure the cartoonist's release was a farce. On 5

June 2013, Arundika Fernando, a Member of Parliament from the United People's Freedom Alliance, (President Rajapaksa's political party) during a debate relating to a regulation under the Sri Lanka Press Council Law was more specific, stating that Ekneligoda was living in France. Referring back to a comment made by the previous speaker that some journalists have disappeared and some have been killed during the Rajapaksa regime, Fernando stated:

“There is no evidence relating to these allegations. I should tell you, some journalists who are said to have disappeared are today living in France. I met some of them there. A very famous journalist, who you are saying has been disappeared is now living in France. He has taken on another identity and is living there. They have gone with the assistance of diplomatic missions here to live there. There are court cases being heard about these disappearances. Their wives on some occasions are crying to the media about these disappearances. Yet at night, these journalists are speaking to their families in secret. That person is living in Paris. I can say, irrespective of parliamentary privilege that person's name. He is Prageeth Ekneligoda”.<sup>1</sup>

Despite the widespread criticism in the print and electronic media and a statement made by Prageeth's wife Sandya that the allegation that Prageeth was living in France was “baseless” (see below), Arundika Fernando M.P. told the press that he stands by his claim that “journalist Prageeth Ekneligoda is living in France and that it is the complete truth”. He went on to describe the

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1 Hansard Vol 217 (5), 5th June 2013, p. 501.

media criticism as a “smear campaign”, which was tarnishing his reputation and violating his parliamentary privileges. Following these statements, Sandya moved the Court to summon the public officials claiming to know the whereabouts of Prageeth to share this evidence in court. It took Sandya eight months to summon Mohan Peiris to court. When she first pressed the Court, the state counsel objected stating that there was no evidence that such a statement was made. Sandya then produced in Court a webcast of the statement made by the AG in Geneva. The state counsel again objected stating video evidence was not admissible in Court. Sandya then submitted a written transcript certified by the Office of the UN High Commissioner for Human Rights. The State then challenged the validity of the transcript stating that it could not be taken as a true copy and that it was not proper to summon Mr. Mohan Peiris, as he had made the statement about the disappeared journalist’s whereabouts as an official representative of the Government. Junior Counsel for the complainant then moved the Court to call a UN representative, to ascertain the validity of the document, if it was not admissible.

These objections were overruled by the Homagama Magistrate. On 17 May, the Court ruled that Peiris can be summoned as a witness. The state counsel appearing for the AG challenged the ruling as illegal in the Court of Appeal arguing that Peiris was acting in his capacity as a senior legal advisor to the Cabinet and that what is said on “[G]overnment orders” and communications where “public interest would suffer” should not be disclosed. It was further argued that Peiris should not be harassed for

carrying out Government instructions. The Court of Appeal ruled that the Homagama Magistrate's Court was acting on their behalf to hear this case and had the freedom to summon Peiris. The Court stated, "Only the President was immune to legal proceedings and may not answer summons by a court of law". The judge stated that Peiris's testimony should not be "pre-empted" and clarified that being summoned cannot be regarded as harassment.<sup>2</sup> It was 5 June 2012, by the time Mohan Peiris gave his evidence before the Homagama Magistrate's Court.<sup>3</sup> Under cross examination in court, Peiris first explained the context in which he made this statement as one in which Sri Lankan State officials were persistently questioned about Ekneligoda by the CAT Committee for almost three hours at its 47th Sessions held in Geneva. He went on to state, "those foreigners not satisfied with the crystal-clear answers keep asking questions regarding the Ekneligoda case". He also stated that the Committee asked "thousands of questions", "ninety nine percent" of which were "designed to belittle and to damage the prestige of the country". It is in these circumstances, when that question was again raised at an open discussion that Peiris admitted that he made the statement that investigations are not over and that the AG's Department had received information and intelligence to the effect that Ekneligoda was living abroad and that if this information is confirmed by their investigations, they will decide whether to file a case. The lawyers for the petitioner,

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2 Ekneligoda Case: Note from hearing at Appeal Court today, Sri Lanka Guardian, 31 May 2012, <https://www.slguardian.org/ekneligoda-case-note-from-hearing-at-appeal-court-today/>; Chitra Weeraratne, Appeal Court rejects AG's Application, The Island, 31 May 2012.

3 K.M. Sandya P. Ekneligoda v Nandana Munasinghe, AR 3170/ 2011, Homagama Magistrate's Court, Court Record dated 5 June 2012.

then asked Peiris whether he can remember the representative of the AG's Department or intelligence officer who informed him of such evidence. Councillor for the Government objected to the question citing section 24 of the Evidence Ordinance to the effect that exposing this information will be detrimental to the public order, but Peiris agreed to respond to the question, nevertheless. He answered: "No", and that his "knowledge on this is total hearsay", adding "I heard them. Only God knows the truth of them".<sup>4</sup>

The Homagama Magistrate's Court, on the request of Sandya and her lawyers, summoned Arundika Fernando to court on 16 July 2013 and 21 August 2013 after the judge overruled the objection to the request that it was in violation of the Minister's parliamentary privileges. In Court, Mr. Fernando admitted he had never seen Prageeth Ekneligoda himself, but that he had made that statement on the trust he had placed on the word of a long lost school friend that he had met on a visit to France from December 2011 to January 2012. Following a lengthy cross examination, the lawyer for the petitioner asked whether what he said in Parliament and to the media was based purely on what his friend had told him in Paris. To this question he responded: "I want to tell you in particular that I am an elected Member of Parliament. I am accountable to my constituency. Following the end of a 30 year old war, when certain problems have emerged, when the Government and war heroes are being denigrated in Parliament, I revealed the information that I learned from my friend in France, in Parliament. I could have not repeated

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4 Geneva 2.0: Lessons unlearned, Daily FT, 31 January 2013, <http://www.ft.lk/columns/geneva-2-0-lessons-unlearned/4-133003>

this information to the media. I repeated this information to the media as a Member of Parliament. The Government is ultimately responsible to the people. To protect the rights of people I made this statement.”

The lawyer for the petitioners also asked whether there were no threats to the lives of journalists in Sri Lanka, to which Minister Fernando responded: “In terms of what has happened in the recent past, these journalists in collusion with foreigners, are working against Sri Lanka and our war heroes”.<sup>5</sup>

As Sandya battled to establish the falsity of the statements of Mohan Peiris and Arundika Fernando, she herself becomes a target of harassment both inside (and outside the courthouse.) Inside the Court, the defence lawyers and the AG’s Department picked on her visits to Geneva to attend the UN Human Rights Council (“UNHRC”) sessions and put her on the dock to explain these visits. On 26 March 2012 for instance, two days after she returned from her participation at the 19th session of UNHRC, the Deputy Solicitor General, appearing for the AG’s Department, questioned Sandya at length. The questions appeared to be for rhetorical effect and were repeated irrespective of the manner in which they were answered by Sandya. Although her lawyer objected to this line of questioning, the questioning lasted approximately one hour.

*“Have you attempted to take this matter internationally?”*

*“Have you taken this matter to the United Nations?”*

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<sup>5</sup> K.M. Sandya P. Ekneligoda v Nandana Munasinghe, A.R.3170, Homagama Magistrate’s Court, Court Record of 21 August 2018.



*“Did you go abroad?”*

*“Who funds you on these trips and gives you food?”*

*“Is it foreign organisations? Who are these organisations? Do they give you living expenses?”*

*“When did you last participate in such a meeting?”*

*“Did you know that a few days before (your participation) the United States sponsored, and the UN Human Rights Council adopted a resolution against Sri Lanka?”*

*Who funded for this trip?”<sup>6</sup>*

This line of questioning reveals that the Rajapaksa regime was extremely concerned and feeling the heat of advocacy efforts taking place before the UNHRC in Geneva by the international community, local human rights activists and victim survivors as well as the Tamil diaspora at the same time that this Case was unfolding in Sri Lanka. Sri Lanka was placed on the agenda of the UNHRC in 2011. By this time the UNHRC had passed two resolutions calling on Sri Lanka to implement a transitional justice process for war related atrocities. Yet, at every turn of this case, the regime continued to perform and reinforce its own power within the judicial system and assert the supremacy of the soldier within the Sri Lankan polity. It did so with the collusion not merely of a few states counsel, but the AG himself, various members of Parliament and the police. When Mohan Peiris told the CAT committee that Ekneligoda is living in a foreign country and then the Magistrate’s Court that “only god knows” where he might be the façade of the separation between Parliament and the Judiciary is abandoned. Similarly, when Arundika Fernando

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<sup>6</sup> Ekneligoda and others v Nandana Munasinghe, A.R. 3170/2011, Homagama Magistrate’s Court, Case Record of 26 March 2012.

told Parliament that a childhood friend has seen Ekneligoda in France, the judicial process is made into a drama where the backstage and frontstage is indistinguishably merged to become one. In fact, the backstage is deliberately exposed for all to see in a spectacle of naked power and arrogance. Indeed, during this period, judges who tried to maintain the independence of the court were invariably transferred and replaced with new ones. A new set of judges at the Magistrate's Court level, however, to their immense credit, were willing to challenge the duplicity of State officials, even if they could not force progress in relation to the investigation without the cooperation of the AG's Department and the police. However, following the defeat of Mahinda Rajapaksa and the election of Maithripala Sirisena, the case took a completely different turn. It is to the second phase of this case following the 2015 elections that I turn to next.

### **Post 2015: Performing the Rule of Law**

Following the election of President Sirisena and the UFGG on a promise of 'good governance', the Ekneligoda Case was handed over to the Criminal Investigation Department (CID) in March 2015. Within a few months, the investigation made rapid progress. By October 2015, a total of 9 suspects including a number of military intelligence personnel attached to the 3rd Military Intelligence Corps ("MIC") Camp located in Giritale were taken into custody initially under the Prevention of Terrorism Act, but subsequently brought under the country's Penal Code on suspicion of abduction, conspiracy and murder. Two others, a Lieutenant Colonel and a Corporal were arrested in September 2018 bringing the number of suspects to eleven

persons. Following the first arrests, the Homagama Magistrate granted leave to the CID to visit and photograph the Giritale MIC and to examine the books and documents maintained by the camp authorities. The Army Commander was directed to provide all necessary facilities to the CID and to detail Military Police officers to provide security for them. According to evidence that was uncovered by the CID and presented before the Magistrate's Court of Homagama, Ekneligoda was first detained in Colombo, then taken to the Giritale MIC Camp where he was interrogated for several days before he was blindfolded and taken to a location in Akkaraipattu.

The CID's findings are based on the confessions of two witnesses – a retired army officer who worked at the Giritale MIC at the time called Ranbanda and a LTTE surrendee working as an army operative based at the Giritale MIC named Sureshkumar – and mobile phone logs. Both Ranbanda and Sureshkumar confessed to seeing Ekneligoda at the Giritale army camp following his disappearance.

Based on this evidence, the CID investigation then focused on establishing the fate of Prageeth following his abduction and detention in the Giritale camp, the person or persons responsible for his disappearance and uncovering the identity of the 'authority' that issued orders to 'disappear' the journalist. In pursuit of this line of investigation the CID called for various documents from the army as well as a number of other institutions. The requested documents include records of vehicular movements, details of official mobile phone numbers

issued to the suspected military personnel, authorisations for travel for more than 20 kilometers from the camp, fuel logs and receipts, attendance and leave records, telephone numbers of visitors to the suspects when they were in remand, etc. Yet the response to these requests were excruciatingly slow or not forthcoming at all. In relation to some requests, the CID reported that it received false information intended to mislead the court. For instance, in January 2016, senior state counsel representing the AG's Department as well as CID officers submitted to court that the army as well as a number of institutions are not 'fully cooperating' in the investigation. The CID also reported that they were "seriously obstructed by Dialog" – one of the largest mobile service operators in the country who was asked to provide details of SIM cards related to this case. Dialog's initial response to the request for information was that they only maintained telephone records for three months, even though the CID was able to obtain telephone records more than 5 years old, 4 or 5 months after the request was made. The CID also reported to court that the response from the Prison Department to a request to release information about the visitors and food supplies to the suspects while they were in remand custody was first met with prevarications and then an extremely confusing report, intended to obfuscate the facts ("ithamath avidimath thorathura vasan karana akarayee varthavak").

It is, however, the army that posed the greatest obstacle to this case in the Magistrate's Court. In relation to some documents requested, they took the position that producing these in court may have a serious impact on national security and pose

a threat to the lives of the officials concerned. In relation to other documents, they stated that such information was not maintained by the army or no longer exist. In June 2016, the army publicly conceded that some relevant files have gone missing. A media communiqué, issued on 21 June 2016, states that the Commander of the Army has appointed a separate Court of Inquiry (COI) to trace the missing documents related to the Prageeth Ekneligoda Case, the findings of which will be intimated to the Courts and the CID. It further reiterated the army's "utmost commitment to the Rule of Law" and that if any member of the Army is found to be involved in this case, directly or indirectly including obstructing justice by suppressing of evidence, such persons will be brought before a court martial irrespective of their rank or stature.<sup>7</sup> However, in December 2017, speaking to the BBC Sinhala channel, the Army Commander General Mahesh Senanayake quite casually said that it was not 'practical' for military records on the abduction of the journalist to still have been kept "if the military intelligence was intelligent". While reiterating the army's commitment to an unbiased investigation, he stated that he himself was not in the army when investigations into this case had commenced in 2015 suggesting that soldiers follow orders, and the investigation should focus on where the orders came from.

*"...one should bear in mind that a soldier is not in a position to question an order that has been given. Therefore, it is not the soldier, but the person who gave the order that should be held responsible and punished. That is why*

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<sup>7</sup> Two courts of inquiry to ascertain whereabouts of missing documents, Sri Lanka Army, Media Communique, 21 June 2016, <http://www.army.lk/news/two-courts-inquiry-ascertain-whereabouts-missing-documents>

*the CID should continue the investigations and find out those responsible. The army works on teamwork. Therefore, if an army person, be it a lower ranker or upper ranker, has done something wrong he will be punished. I cannot run an army of thugs...’<sup>8</sup>*

The CID while expressing its frustration in relation to the lack of cooperation from the army on a number of occasions in the Court, argued that some of the documents requested relate to basic operational data with no implications for national security particularly in the absence of war. It requested the army to spell out and explain in writing to Court how exactly these documents will impact on national security. The CID also refused to accept the army’s claim that they do not possess basic operations data requested from them. During one hearing the CID officer expressed his frustration as follows:

“I also wore a uniform for 10 years. Your Honour, I know how records are maintained in army camps. The uniforms, the weapons, where did the food come from, where you sleep, these are all recorded. Yet they tell us that the army is not aware of the officers who used the telephones for which the army is paying the bills. These are the obstacles that we are facing. It is clear that if the army cooperates, we can finish this case in two weeks.”

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<sup>8</sup> Wife seeks army support in probing Ekneligoda case, UK Tamil News, 19 January 2018, <http://www.uktamilnews.com/?p=27178>

Despite the lack of cooperation, the magisterial inquiry into the Case was concluded with sufficient evidence to indict the accused. In November 2019, the Attorney General indicted nine military

intelligence officers before a special Trial- at- Bar in relation to the disappearance of Prageeth Ekneligoda.<sup>9</sup> They were charged under several sections of the Penal Code including Sec. 102 (abetment), Sec. 112 (concealment of the design to commit an offence by a public officer, which is his duty to protect), Sec. 140 (unlawful assembly), Sec. 355 (kidnapping or abducting in order to murder), and Sec. 296 (murder). The indictments however coincided with the 2019 Presidential Elections and the election of Gotabaya Rajapaksa as President.

### **Election of Gotabaya Rajapaksa as President**

Following the election of Gotabaya Rajapaksa, all the accused in the Ekneligoda case filed complaints before the Presidential Commission on Political Victimisation appointed by President Gotabaya Rajapaksa in January 2020.<sup>10</sup> When the trial began, this Commission was not only hearing evidence from the very same accused in the Ekneligoda case, but also summoning some of the key witnesses in the case. In December 2020, it summoned Ranbanda, one of the key witnesses in the Ekneligoda Case to

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9 According to the dictionary meaning a Trial- at- Bar is criminal prosecution before three or more judges of a high-profile case or a case that raises novel points of law

10 The full name of this Commission is Commission to Investigate and Inquire into and Obtain Information in Relation to Alleged Victimisations of Public Officers, Employees of Public Corporations, Members of Armed Forces and Police Service, who were holding posts during the period commencing from 8 January 2015 to 16 November 2019.

give a statement before it, despite, a court order prohibiting him from giving evidence before any other forum, until the conclusion of the Ekneligoda Case. The Commission for its part, expressed its shock and dismay about the prohibition, taking the view that no such prohibition could be imposed on its own power to summon witnesses, and proceeded to hear the testimony of the witness. In the latter's evidence before the Commission, he retracted his confession given under oath to the Homagama Magistrate in 2015, stating that his confession was given under threat and duress. He stated that certain CID officers threatened him with 4 to 5 years in jail unless he cooperated, and he followed their instructions for fear of being incarcerated and cut off from his family for a long period of time. He further told the Commission that he lied to the Magistrate, "in order to get out of this". In its final report, the Commission concludes that the Magistrate's Court inquiry in the Ekneligoda case was a blatant attempt by those named as respondents by the complainants before the Political Victimization Commission — i.e., persons such as former cabinet minister, Mangala Samaraweera, and the former head of the CID, Shani Abeysekera, amongst others – to politically victimise the complainants. Based on this conclusion, the Commission went on to exonerate and acquit the complainants of all charges made against them (even though it did not have the power to overrule the decision of a court of law). The Commission further concluded that the previous Government – the United Front for Good Governance – was motivated to politically victimise a range of Government officials, police officers, armed forces personnel in the name of addressing bribery, corruption and impunity, by a desire



to appease its supporters, and to undermine the contribution of the military intelligence officers to the war victory over the LTTE in 2009, while satisfying the international rump of the LTTE. Ranbanda made a similar statement in substance to the one that he made before the Political Victimisation Commission before the Ekneligoda Trial- at- Bar on 29 September 2020. Sureshkumar, the second key witness for the prosecution, has also now asserted that his confession was given under duress and that he no longer stands by what he said to the Magistrate.

Following the withdrawal of these two witnesses, the prosecution's case against the accused in the Ekneligoda Case has become considerably weaker and more reliant on secondary evidence such as phone logs. Moreover, the Trial- at- Bar is now progressing at a snail's pace with weeks and sometimes months between hearings.

### **Concluding Thoughts**

The disappearance of Prageeth Ekneligoda and the subsequent criminal investigation and trial of the accused in his disappearance reveals the contingency of the law as an emancipatory mechanism and the extent to which the law is entangled in politics in Sri Lanka. This case also demonstrates the ways in which international pressure can force the State to perform the rule of law whether as farce or as tragedy. The high levels of international and local scrutiny of the Ekneligoda Case unleashed a political and legal chain reaction which reverberated through the Magistrate's Court in Homagama. This case perhaps more than any other post-war prosecution of the military, brings

to the fore, the ways in which politicisation of justice can work both ways. It starkly demonstrates the extent to which political will matters in cases such as this. However, it must be noted that Sandya Ekneligoda, the wife of Prageeth Ekneligoda played a critical role in politicising this case right from the outset. First, by challenging the State's denial, during the Mahinda Rajapaksa years from 2010 to 2015 and then by explicitly supporting the UFGG coalition before the 2015 elections. This is why this case was moved to the CID after the election, when other similar cases made little progress even under the UFGG. Yet 13 years after this case was filed, whether Sandya and her two sons will ever learn what happened to Prageeth after he was taken to Giritale remains contingent. In a context where the two key witnesses in this case have turned hostile to the prosecution, whether there is sufficient evidence to hold any of the accused criminally liable under the original indictment remains to be seen. Sandya will no doubt continue to do whatever is in her power to do, to keep the promise of justice alive, for herself and her two sons, even in the darkest of times.

## **References**

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## **Interview with Mrs. Sandya Ekneligoda**

This is the transcript of an interview with Mrs. Sandya Ekneligoda who has been defying countless obstacles in the road to justice ever since the enforced disappearance of her husband, Prageeth Ekneligoda, journalist who went missing on 24 January 2010. The interview was conducted by Bhavani Fonseka at the Centre for Policy Alternatives (CPA) on 19 October 2021. CPA is grateful to Mrs. Ekneligoda for sharing her experiences with us.

### **How would you describe your experience in engaging with investigative authorities and the court system in your quest for justice?**

A: I have had experience with the judicial system of Sri Lanka for almost a 12 year period during which time I have gone to different courts for more than 200 days. First of all, I would like to say that when I first started my struggle for justice, I knew that gaining justice would be difficult, but I had no idea how cruel the process would be. This is because of the role of politics in the State machinery for obtaining justice.

The only positive that I have seen is the handful of judges who are able to be independent and impartial in the face of such influence. I also experienced how State officials are able to act once the political pressure is lifted off them.

Investigative authorities – When considering the Police and the CID (Criminal Investigation Department), I again experienced

how officials in these institutions were able to act once the political pressure no longer existed. The main point I would like to highlight is that these institutions should be free from political pressure and able to act independently.

These institutions are not independent due to the interference by Rajapaksas. Something very curious is that they were able to interfere even when they were not in power. For instance, when I take a letter to the Ministry of Justice, even if the Rajapaksas are not in power, they are able to contact someone there and interfere.

When I went to the police in 2012, for the last time, I was asked whether I had not gone to see a soothsayer “සාප්තරකාරයා”. I replied, “soothsayers do not do investigations”.

After the change of Governments in 2015, the Case was transferred from the police department to the CID. The B report case was revived. It was during this time that persons suspected were arrested.

**Did you see a visible change in how the case was handled with the change of Governments in 2015?**

Yes. In 2015, the Case was in the Colombo Crimes Division (Dematagoda), and in March it was transferred to the CID. I think the 2015 change in Government was a reason for the change, although still there were challenges. It was in the period between 2015 – 2017 that they apprehended those who were

responsible for the crime. (In 2014, the case had not been called up in Court)

When they were filing an answer for the habeas corpus case, they said that there was no complaint of the first abduction. Joseph Michael had talked about it in parliament. In 2015, the CID found that there was a complaint lodged with the police about the first abduction.

At this time, the habeas corpus case was withdrawn to take up the B report Case. Now, officials from the Attorney General's Department (the AG's Department) were representing us. Some of the officials who were there earlier were not there now.

2016 was the worst time in terms of undue influence. By December 2015, the CID had identified 9 army intelligence officials and they had been produced in Court. On 25 January 2016, they were again produced in Court. The Magistrate sent them back under arrest for 14 days. In those days, the Courtroom was full of people who had come to support the apprehended army officials. I can stay alone without having anybody. I went to Court alone often.

**Was there a threat to you because there were a lot of people to support the other side and you were mostly alone? Did you feel a sense of fear because of that?**

Even though I was afraid, I did not give into the fear. People ask me whether I am not scared. I would just smile. But there

were individuals from different human rights organisations who came with me sometimes.

**What are the concerns and fears you and your family have faced/are facing during the course of the legal proceedings?**

In the years 2010 – 2014, the habeas corpus case was taken up. When Mohan Peiris came to Court, it was crowded. Members of parliament/politicians came to support them.

On 26 January 2016, the monk Gnansara came. That day when he was shouting at me, I felt that he was going to hit me the next moment. I did not run outside; I ran towards the judge.

In February 2016, they started putting up posters which said “is Ekneligoda the father of Dileepa Peiris?” and started slinging mud at me by asking how I can find the money for my ‘Europe tours’ by selling rice packets to the CID and that I had betrayed the Giritale camp.

**It is the duty of the AG’s Department to obtain justice for victims. If such officials are also abused, how can you find justice in a country like this? Institutions that are for the protection of the people should be free from political machinations.**

An obvious advantage I have is that I am a Sinhalese Buddhist, which is the majority in this country.

**Did you experience a difference because of that?**

No, but because of that I was able to live in society without fear. But what about minorities? Fear is ingrained into them by society from the beginning.

**In your view, what are the reasons for delay/inaction related to the investigations/ legal proceedings? Can you describe your experience of dealing with investigators and the courts with regards to this issue?**

For victims, the first resort is the police and the Human Rights Commission (HRCSL). It was in 2010 that I first went to the police. At the Homagama police station, I had to stay for about an hour. The police officer I talked with first, wrote down my name and said the complaint needed to be written well and fetched the OIC (Officer-in-Charge). They were expecting me. For over half an hour, I had to argue with the OIC to get them to lodge a complaint. They tried to send me here and there. They said “her husband must be at home” and “people disappear to make themselves famous”. They asked me to go to Rajagiriya (where Prageeth’s office is) and Koswatte (where the last call had come from). I told them I will go there too and asked them to write down my complaint because this is where we reside and this is the nearest police station. When I went to the Koswatte police that same evening, a fax of the complaint had arrived there.

When I went to the HRCSL, the officer said that cases about enforced disappearances are not accepted. I had to argue with them. Then I was given a form to fill, and they got police testimony thrice. In August 2011, I sent a letter to the HRCSL requesting for a meeting and there was no answer. When Mohan Peiris made a statement in Geneva that Prageeth had been seen abroad, I wrote a letter to the HRCSL (with a copy to the United Nations), asking them to obtain testimony from Mohan Peiris as he knew the whereabouts of my husband. I received a letter in which the HRCSL had requested an affidavit from Mohan Peiris. I wrote back thanking them and requesting them to bring him and do an investigation. The HRCSL then asked me to not give orders to them. That was the last letter I got from the HRCSL. In March of 2010, I went to the Nugegoda Crimes Unit. They had obtained phone records. They might have found things, but this was not produced in Court. Then the case was transferred to the CCD (Colombo Crime Division) as soon as the Nugegoda Crimes Unit got the phone records. I saw this in the newspaper. They said it was because of the upcoming elections because the police have political duties. The head of police had given the order in April. I was told by the Nugegoda Crimes Unit that there was nothing they could do.

The case was transferred from the CCD to the CID. The CCD had done nothing. When you read the first chapter of the B report, you can see that. For almost 5 years, nothing was done. This is due to political interference. The case officer gave his report as a closed document to the Court. This was very clearly due to political pressure.



From 2016 – 2019, the B report Case was taken up. In 2016, the Case was called in court for about 50 times. In 2017, the officials of CID were doing their work amidst a lot of interference. Sometimes the army hid evidence. The documents they asked for from the Giritale camp were not confidential documents. They were documents like salary particulars, records of attendance, vehicle and service reports. They did not even let the CID enter the Giritale army camp.

Then they said that these documents were in a shed and that they got burned in a fire. They also said it was a matter of national security. Then documents finally produced in Court by army intelligence were fake ones. They would come to court all the time, those days. 2016, 2017, 2018 was like a war.

### **Was it because the investigation was going forward?**

Yes. In 2019, there were a lot of obstacles for investigations. The Magistrate would call repeatedly for charges to be filed. By August I came to know that charges were going to be filed for unlawful arrest but not for murder. I sent a letter to the authorities which described everything. I subsequently learnt that there would be 17 charges filed against those apprehended. The CID had investigated the first abduction and the second abduction as a continuation. The persons involved were the same except for the 2nd accused who was not present in the first one as he had been away for a training program.

In the first abduction, I do not think they intended to let him come back alive. He was let free that time because someone inside with influence must have intervened.

**The case was taken up before the Commission of Inquiry into Political Victimisation. A fundamental rights petition against the final report of the Commission was filed by you. What are your thoughts and concerns regarding the recommendations of the Commission?**

Victims were not called in at all before this Commission. Their side was not heard. It is the Attorney General who institutes action. But now the respondents before the commission are the State officials who did the investigations.

I filed an FR application (fundamental rights application) against the recommendations of the Commission. It has not been called up in Court yet due to the pandemic.

**You have actively engaged with international accountability mechanisms and institutions in seeking justice. What has been your experience so far?**

We cannot dismiss the fact that Geneva resolutions might not have much impact here. Today, the global order is also changing. This can affect even what happens inside the UN (United Nations Orgnaization).

To be able to influence the Government, there should be a way to put pressure on the Government. We need an international mechanism to put pressure on the economy and political system of Sri Lanka. For instance, it is through international sources that funding is obtained for the maintenance of some offices like the OMP (Office on Missing Persons) and the HRCSL. When we establish a mechanism within Sri Lanka, it is a vindication, for all the insults and suffering we have faced.

**What about victims then? Will they not be affected by such restrictions on funding for these offices?**

It will not make any difference for victims. The Government uses these offices for their political projects. These are used to show that they are doing something.

**So, funds should be stopped for the Attorney General's Department too?**

In the Sri Lankan judicial system, criminal cases are brought by the Attorney General. So, we need to maintain the office of the Attorney General. But if they fund the AG's Department, they should be able to have a framework for the independence of such officials and ensure that it is complied with. The AG's Department and the judiciary should be independent from any influence by the Legislature or the Executive.

Further, when talking about international accountability mechanisms, the UN High Commissioner's report is important.

Sometimes the Government will take some measures to show the international community. For instance, we are given victims protection now because of that. We can influence mechanisms in Sri Lanka through mechanisms in Geneva. If we write to the HRCSL, we might not get a response, but if we send a letter to the HRCSL with a copy also sent to Geneva, then the HRCSL will reply to that.

**What is the impact of the international people’s tribunal in Lasantha Wickrematunge’s Case?**

When anything is done internationally, that reinforces the ability of the Judiciary to stay independent.

**In your view, what are possibilities for justice within the existing legal framework and context of Sri Lanka?**

Presidential candidate Gotabaya Rajapaksa made a statement in Anuradhapura, and stated that steps would be taken to acquit army officers. I wrote a letter to him asking whether this was justice.

The Government also stated that they would be issuing death certificates for the disappeared. We do not need death certificates without truth and justice. When you say that you will give death certificates for persons who died or disappeared while in custody, indirectly it is admitting responsibility for their deaths.

**What are your expectations for the future regarding the progression of the case?**

We passed the best chapter in Sri Lankan history for justice. I do not think such a time will come again.

**In your experience as an activist championing the rights of victims of enforced disappearances, what role does collective action and solidarity with other victims play in the quest towards justice?**

By 2015, there was an impact due to their work. The media too that was repressed could be free again. Today, they are repressed again.

**However, victims of enforced disappearances in the North do not trust local processes. Some civil society factions also think that justice is not possible within Sri Lanka and demand for international mechanisms. There is also the notion that prosecution of crimes will be a hindrance to reconciliation. What do you think about that?**

We need a mechanism that will accommodate all these requirements. I am agreeable to an international mechanism. However, I prefer a local mechanism for justice. But it is true that the local processes cannot be trusted fully. That is why we need the support of the international community too.

While it is true that some victims need the intervention of the ICC (International Criminal Court), that is not possible in Sri

Lanka. We need to live with realities that can take root in the ground here.

**How can we bring about such a dialogue with the victims in Sri Lanka?**

It is difficult to convince the minorities of the need to have a local mechanism because of politicisation.

It is the duty of the institutions to gain the trust of the victims and maintain it. Victims need to feel that this is our institution established for us. Most institutions could not do that. Especially the victims of enforced disappearances in the North did not feel that.

**Is a victim movement in the future possible with the existing divisions?**

We need to have a discussion. We would need to get together with not only the victims in the North, but also in the South. We would also need resources and funding. We also need to raise awareness among victims as to what extent support could be had from mechanisms in Geneva and what obstacles we face in the long journey towards justice. Civil society too could organise these conversations.

**In your experience, what do you think is the role of the victim in the transitional justice processes?**

In the years from 2010 – 2015, when the habeas corpus action I had filed was being taken up, the Attorney General was the respondent on behalf of the State. It was like the Attorney General was my opponent.

In 2012, when the case regarding the abduction of Prageeth was ongoing, I was being questioned in the Magistrate’s Court as to why I had gone to Geneva by the then Deputy Solicitor General. They did not ask questions relating to the abduction of Prageeth. Instead, when I was in the witness box, they asked me why I had gone to Geneva, who provided the resources to get there, how I obtained food and whether I betrayed the Government. On 12 March I came back to Sri Lanka from Geneva. On 25 March, I was cross questioned in Court about it. They kept asking me the names of the organisations that provided funding.

There were some lawyers with the AG’s Department who worked independently which I saw as a positive.

When the army personnel were in prison, a lot of politicians would come to see them. This is politics in our country. In 2015, a change was felt, because the investigation went into the hands of honest officials. As I see it, the political system in our country is a ‘caste’. Those who got involved in these crimes are people obedient to those in power. Irrespective of the political party in power, they have the blessings of those in power whether it

be the Rajapaksas, Sirisena, SLFP, UNP or JVP. Why? Because political power is dependent on votes.

**It seems like we are going back on the progress that was made. What can we do about this?**

The civil society needs to work together in a more organised manner to address these issues. It is only if we strive on, that we will gain justice. Although civil society was instrumental in bringing about a change in 2015, they were unable to raise awareness in the general population about the role of the citizen and generally create a framework which would pose a challenge to impunity.

Certain people who were instrumental in bringing about the political change in 2015, started enjoying privileges. This created disappointment in civil society, and they scattered. That was why the civil society which had come together in 2015 was scattered by 2020. It was because they were together in 2015 that they could bring about a change.

I never got the opportunity to meet with the President in private. But in his campaign, even my picture was used. Although I was not able to meet him, the concerned army officials and their families could meet him.



**What would be your message to other individuals who are also struggling for justice?**

For justice, we need international support, and we need to fight for it. We need to hold on.

# **A Far Cry from Justice: An Analysis of Crimes Committed against Journalists through the Prism of Freedom of Expression, Impunity and Accountability**

**-Amra Ismail**

## **Introduction**

The UN Plan of Action on the Safety of Journalists and the Issue of Impunity recognises freedom of expression as not only an “individual right, for which no one should be killed”, but also as a “collective right which empowers populations through facilitating dialogue, participation and democracy, and thereby makes autonomous and sustainable development possible.”<sup>1</sup> Unlike average citizens, journalists are at a higher risk of being victimised for their exercise of free speech.

Attacks against journalists has a multitude of repercussions. It leads to self-censorship. The threat of an impending attack thwarts good journalism where journalists could expose abuses unflinchingly and uncensored for the benefit of the public. This, in turn, affects the right of others to receive information and form informed decisions about matters that affect them. The Human Rights Committee has recognised that while a free press is able to comment on public issues without censorship or restraint, the public have a corresponding right to receive media

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<sup>1</sup> UN Plan of Action on the Safety of Journalists and the Issue of Impunity CI-12/CONF.202/6

output.<sup>2</sup> A “free, uncensored and unhindered press” is, in fact, one of the cornerstones of a democratic society.<sup>3</sup>

The purpose of the targeted extra judicial/arbitrary killings and attacks is to stifle dissent and to discourage the reporting of the truth. In Sri Lanka, the atmosphere of impunity and suppression of dissent through extra judicial killings during the period of war resulted in journalists leaving the country fearing for their lives. This was due to death threats they had received for reporting on human rights violations in the country,<sup>4</sup> and due to violence experienced by fellow journalists.

Article 19 of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights provide for the freedom of opinion and expression. Article 14(1)(a) of the Sri Lankan Constitution guarantees the freedom of speech and expression including publication. This right by implication recognises the freedom of the press.<sup>5</sup>

Domestically, no crime committed against journalists has been investigated completely and those responsible held accountable. One of the main causes of impunity is the lack of political will to pursue investigations. The political climate was such, and is still so, that the investigation of such crimes is not prioritised

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2 UNHRC, ‘General Comment 34’ (2011) CCPR/C/GC/34 para 13.

3 *ibid.*

4 Human Rights Council, ‘Report of the OHCHR Investigation on Sri Lanka (OISL)’ (16 September 2015) UN Doc A/HRC/30/CRP.2 para 257.

5 Clare Boronow, ‘Silencing the Media in Sri Lanka: How the Sri Lankan Constitution Fuels Self-Censorship and Hinders Reconciliation’ (2013) 53 *Va J Int’l L* 725

or even considered as cause of concern. The resolution co-sponsored by the Government in 2015 encouraged the Government to investigate alleged attacks against journalists, to hold perpetrators to account and to take steps to prevent such attacks in the future.<sup>6</sup> However, in 2020 the Government withdrew from these commitments to the UN Human Rights Council.

The spectrum of violations committed against journalists include arbitrary killings, assault, torture, enforced disappearances, intimidation, etc. Existing international instruments provide for the right to life and the prohibition of torture and cruel, inhuman or degrading treatment or punishment as inalienable rights. This means that these rights cannot be derogated from even during a public emergency that threaten the life of the nation.<sup>7</sup>

In September 2016, the UN Human Rights Council adopted resolution 33/2 which urges States to 1) prevent violence, threats and attacks against journalists; 2) ensure accountability through the conduct of impartial, prompt, thorough, independent, and effective investigations into such crimes that fall within their jurisdiction; 3) bring perpetrators, including those who command, conspire to commit, aid and abet or cover up such

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6 United Nations General Assembly, 'Resolution adopted by the Human Rights Council on 1 October 2015' (14 October 2015) A/HRC/RES/30/1 para 11.

7 Amit Mukherjee, 'International Protection of Journalists: Problem, Practice, and Prospects' (1994) 11 *Ariz J Int'l & Comp L* 339, 356

crimes to justice;<sup>8</sup> and, 4) ensure that victims and their families have access to appropriate remedies.

The obligation of the State of Sri Lanka is thus fourfold. Firstly, the State should have put in place effective measures to protect journalists from attacks. Secondly, the State should have not been complicit in committing crimes against journalists. As per the Human Rights Committee, State parties should take measures to prevent arbitrary killings by their own security forces.<sup>9</sup> Thirdly, the State should have vigorously investigated the crime in a timely manner, and prosecuted those found responsible and ensured that victims, or in the case of killings, their representatives are provided appropriate forms of redress.<sup>10</sup> Further, where a non-state party is alleged to be responsible, the State is still responsible to prevent such attacks and has a responsibility to conduct effective investigations into such attacks. Fourthly, the State should abolish laws that can be used to victimise journalists for doing their jobs. However, in most instances, the State failed to protect journalists, failed to conduct effective investigations and prosecute those responsible

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8 Also see Principles 20, Declaration of Principles on Freedom of Expression and Access to Information in Africa, African Commission on Human and Peoples' Rights. It considers attacks on journalists and other media practitioners to be a violation of freedom of expression. It elaborates on the obligation of States to guarantee the safety of journalists and to prevent attacks such as murder, extra-judicial killing, torture and other forms of ill-treatment, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, unlawful surveillance undertaken by State and non-State actors of journalists. It further lays down that States should take effective legal and other measures to investigate, prosecute and punish perpetrators of attacks against journalists.

9 UN Human Rights Committee (HRC) 'General Comment No. 6: Article 6 (Right to Life)' (1982]

10 See (n 2) 'General Comment No.34' para 23.

for the crimes. Against such a backdrop, impunity pervades the accountability process for crimes committed against journalists in Sri Lanka.

The next part illustrates eight instances in which journalists were targeted for their professional work. It seeks to explore how such attacks remain unsolved, creating an atmosphere of impunity and denying even a semblance of justice. Part 3 analyses such crimes against journalists in light of the extent of speech that is protected by law. Part 4 analyses the reasons for impunity and attempts to demonstrate how accountability could ideally be achieved and the extent to which journalists who have been subjected to such crimes are redressed or seek redress.

### **Crimes Committed Against Journalists**

This section illustrates by referring to few chosen violations committed against Sri Lankan journalists, the type of speech exercised for which they were targeted, the means of violation equipped to suppress speech, who was alleged to have perpetrated the crime and the ensuing investigation or the lack thereof which has led to complete impunity for crimes committed against journalists in Sri Lanka. It should be noted that the instances chosen for analysis are not exclusive by any means and are only representative of a wide range of other similar instances of violations perpetrated against journalists in Sri Lanka.

## Extra-judicial Arbitrary Killings

### Dharmeratnam Sivaram

Sivaram was a political columnist for the Daily Mirror and was an editor at Tamil Net.<sup>11</sup> His reporting and commentaries were often critical of the Sri Lankan Government. He had been abducted outside a Colombo restaurant in 2005 and was later found dead with gunshot injuries.<sup>12</sup> His body was discovered near the Sri Lankan Parliamentary Complex in an area patrolled by the Sri Lankan security forces, leading local groups to blame the Government for his murder.<sup>13</sup> Sivaram's relatives and friends have alleged that the Tamil paramilitary groups may have been involved as Sivaram supported Tamil nationalists and was critical of abuses by the security forces and the paramilitaries.<sup>14</sup>

The Inspector General of Police ("IGP") at the time, Chandra Fernando promised an investigation and reportedly stated that the investigation would focus on the restaurant, the tables, and chairs and even the glasses used by those who were with Sivaram at the restaurant just before his death.<sup>15</sup> The

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11 International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 03; International Press Freedom and Freedom of Expression Mission to Sri Lanka, Press Freedom and Freedom of Expression in Sri Lanka: Struggle for survival (2017) 8.

12 'No quorum on Sivaram debate' (BBC Sinhala, 06 May 2005) [https://www.bbc.com/sinhala/news/story/2005/04/050429\\_pm\\_sivaram](https://www.bbc.com/sinhala/news/story/2005/04/050429_pm_sivaram)

13 International Press Freedom and Freedom of Expression Mission to Sri Lanka, Press Freedom and Freedom of Expression in Sri Lanka: Struggle for survival (2017) 8.

14 'TamilNet editor's murder still unpunished, impunity prevails in Sri Lanka- RSF' (Tamilnet, 28 April 2006) <https://www.tamilnet.com/art.html?catid=13&artid=17954>

15 'PM condemns Sivaram murder' (BBC) [https://www.bbc.com/sinhala/news/story/2005/04/050429\\_pm\\_sivaram](https://www.bbc.com/sinhala/news/story/2005/04/050429_pm_sivaram) accessed 28 January 2022.

Government condemned the murder unreservedly and ordered an investigation into the killing.<sup>16</sup>

The initial investigation was conducted by the Criminal Investigation Department and the Colombo Crime Division.<sup>17</sup> A former leader of the People's Liberation Organisation of Tamil Eelam, Arumugam Sri Skandharajah, alias Peter, and another were reportedly arrested by the police in connection to the killing.<sup>18</sup> Several other arrests were made after locating Sivaram's mobile SIM card in the possession of Peter.<sup>19</sup> A vehicle belonging to the PLOTE leader, D. Siddarthan, had also been taken into custody.<sup>20</sup>

Peter was indicted by the Colombo High Court. The Attorney General's Department ("AG's Department") filed the case on four counts for conspiring to abduct Sivaram between 01 January 2005 and 28 April 2005 in Colombo, Bambalapitiya and Maharagama.<sup>21</sup> However, the investigators had allegedly received orders from a senior police officer to halt the investigation after the evidence had led them towards the leader of a paramilitary group and a political party affiliated to the Government.<sup>22</sup> In May 2007, the Colombo High Court issued arrest warrants for

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16 *ibid.*

17 International Truth and Justice Project, Sri Lanka: Briefing Note 6: Summary Index of Emblematic Cases (February 2021) 4.

18 *ibid.*

19 *ibid.*

20 *ibid.*

21 'Sivaram case in April' (Daily News, 06 November 2007) <http://archives.dailynews.lk/2007/11/06/news21.asp>

22 (n 17) Briefing Note 6.



three witnesses listed as State witnesses by the AG's Department, for failing to appear in court.<sup>23</sup>

The hearing was postponed several times due to the 'absence of vital witnesses'.<sup>24</sup> When the case was taken up in May 2018, the Senior State Counsel pleaded to postpone the trial because one of the 31 listed witnesses by the prosecution had gone abroad.<sup>25</sup> When the case was taken up in December that year, the case was postponed again for 6 months and the judge fixed the inquiry for June 2009 before a Sinhala speaking jury. However, there was no progress in the case for the next two years for unexplained reasons.<sup>26</sup> The trial re-commenced before a Sinhala speaking jury in 2011.<sup>27</sup> It was also reported that the main suspect, Peter, had been released on bail.<sup>28</sup> When the case was taken up in January 2012, the case was postponed again as the State Counsel informed court that the hearing could not proceed as six witnesses which included two policemen had failed to appear in court.<sup>29</sup> Further, the judge revoked the decision to have a Sinhala speaking jury and ordered the jury to be disbanded.<sup>30</sup>

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23     ibid.

24     'Hearing in Sivaram assassination case put off for April 25' (Tamilnet, 06 January 2012) <https://www.tamilnet.com/art.html?catid=13&artid=34768>

25     (n 17) Briefing Note 6.

26     ibid 5.

27     'Justice for killed journalists- Waiting for Godot' (Sri Lanka Brief, 07 May 2013) <https://srilankabrief.org/justice-for-killed-journalists-waiting-for-godot/>

28     (n 17) Briefing Note 6.

29     ibid 5.

30     ibid

The trial halted due to a lack of evidence.<sup>31</sup> Police officers are alleged to have covered up vital evidence.<sup>32</sup>

### **Subramaniam Sugirtharajah**

Sugirtharajah worked for the Tamil daily ‘Sudar Oli’. He was killed in January 2006 by unidentified gunmen while he waited for a bus to go to work.<sup>33</sup> This was after he reported on the killing of five students in Trincomalee which included publishing photographs of the head wounds of the dead students.<sup>34</sup> The dead young men had been falsely accused of having died in an explosion while preparing an attack against security forces.<sup>35</sup> Sugirtharajah (along with his colleagues) managed to take photographs of the dead bodies with bullet wounds that contested the false accusations levelled against them,<sup>36</sup> suggesting that the students had been killed by gunshot wounds execution style.<sup>37</sup>

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31     ibid

32     (n 11) Sri Lanka Briefing Note 5, 01.

33     International Press Freedom and Freedom of Expression Mission to Sri Lanka, Press Freedom and Freedom of Expression in Sri Lanka: Struggle for survival (2017) 8.

34     ‘U.S. Department of State Country Report on Human Rights Practices 2006- Sri Lanka’ (Refworld) < <https://www.refworld.org/docid/45f0569c19.html> > accessed 16 November 2021.

35     Johan Mikaelsson, ‘A Special Day To Remember Sugitharajah And Why He Was Murdered’ (Colombo Telegraph, 24 January 2016) <https://www.colombotelegraph.com/index.php/a-special-day-to-remember-sugitharajah-and-why-he-was-murdered/>

36     ibid.

37     ‘Can Sri Lanka turn a page on a decade of media repression?’ (Amnesty International, 28 January 2016) <https://www.amnesty.org.nz/can-sri-lanka-turn-page-decade-media-repression>

There was no investigation conducted into his death,<sup>38</sup> The LTTE political officer, reportedly, had stated that the assassination was carried out by paramilitary groups that collaborated with the Sri Lankan Army.<sup>39</sup>

### **Nimalarajan Mylvaganam**

Nimalarajan Mylvaganam, who reported for the BBC Sinhala and Tamil Services, the Virakesari and the Ravaya, was killed in the year 2000.<sup>40</sup> He was working on an article in his study when he was shot at and a grenade was thrown into his house.<sup>41</sup> The incident took place during curfew and his house was situated between three military checkpoints.<sup>42</sup> It is suspected that his reporting on vote-rigging and intimidation in Jaffna during the parliamentary elections may have led to his murder.<sup>43</sup>

The President at the time, Chandrika Bandaranaike Kumaratunga ordered an immediate inquiry. The paramilitary group, the Eelam People's Democratic Party ("EPDP") which was named by UN investigators for its role in extrajudicial killings and

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38 International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 03.

39 Johan Mikaelsson, 'A Special Day To Remember Sugitharajah And Why He Was Murdered' (Colombo Telegraph, 24 January 2016) <https://www.colombotelegraph.com/index.php/a-special-day-to-remember-sugitharajah-and-why-he-was-murdered/>

40 International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 03. *ibid* 04.

41 Mylvaganam Nimalarajan (CPJ) <https://cpj.org/data/people/mylvaganam-nimalarajan/> accessed on 28 January 2022.

42 International Truth and Justice Project, Sri Lanka: Briefing Note 6: Summary Index of Emblematic Cases (February 2021) 5.

43 Mylvaganam Nimalarajan (CPJ) <https://cpj.org/data/people/mylvaganam-nimalarajan/> accessed on 28 January 2022.

abductions, was alleged to be the perpetrators.<sup>44</sup> The CID failed to interview a key suspect, Sebastianpillai Ramesh, also known as ‘Napoleon’.<sup>45</sup> The police is alleged to have never seriously made use of the physical evidence such as the cartridge cases and fingerprints.<sup>46</sup> In 2016, the Jaffna High Court reportedly issued an international warrant for the arrest of Napoleon in relation to a conviction that year for another political murder.<sup>47</sup> However, the investigation was abandoned.<sup>48</sup> The suspects arrested were acquitted in May 2021.<sup>49</sup>

In early 2022, the United Kingdom Metropolitan Police War Crimes team reportedly arrested an individual in connection to this murder under Section 51 of the International Criminal Court Act 2001 (which relates to Genocide, crimes against humanity and war crimes<sup>50</sup>) and was later released under investigation.<sup>51</sup>

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44 International Truth and Justice Project, Sri Lanka: Briefing Note 6: Summary Index of Emblematic Cases (February 2021) 5.

45 *ibid*

46 *ibid*.

47 *ibid*

48 International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 03.

*ibid*

49 ‘Sri Lanka: Reopen the investigation into the murder of journalist Mylvaganam Nimalarajan’ (Samsn, 24 May 2021) < <https://samsn.ifj.org/sri-lanka-reopen-the-investigation-into-the-murder-of-journalist-mylvaganam-nimalarajan/> > accessed 28 January 2021.

50 International Criminal Court Act 2001 <https://www.legislation.gov.uk/ukpga/2001/17/section/51>

51 ‘UK Metropolitan police War Crimes team arrested individual over Lankan journalist murder probe’ (Sunday Times, 24 February 2022) <https://sundaytimes.lk/online/news-online/UK-Metropolitan-police-War-Crimes-team-arrested-individual-over-Lankan-journalist-murder-probe/2-1136901>

## **Paranirupasingham Devakumar**

The LTTE too has been accused of committing crimes against journalists. Devakumar was a Jaffna correspondent for Maharaja Television, who was attacked and killed allegedly by supporters of the LTTE in retaliation to his critical reporting of the activities of the LTTE in the area.<sup>52</sup> Before his death, he had covered a Government sponsored rally that the LTTE wanted him to avoid.<sup>53</sup> The Government had reportedly assigned three police teams to probe the incident.<sup>54</sup> However, police had subsequently suspended the investigations stating that there was a lack of evidence and as a result there were no arrests made.<sup>55</sup>

## **Relangi Selvarajah**

Relangi Selvarajah, a journalist for the Sri Lanka Broadcasting Corporation, and her husband were shot dead in 2005 by unknown gunmen in Bambalapitiya.<sup>56</sup> The LTTE is alleged to have perpetrated the crime because of her anti-LTTE programmes.<sup>57</sup> She produced the SLBC programme Ithaya Veenai, which was known for criticising the LTTE and was funded by the Eelam People's Democratic Party. She had also been critical of the LTTE on the radio programme Uthayam

52 CPJ, Paranirupasingham Devakumar <https://cpj.org/data/people/paranirupasingham-devakumar/>

53 *ibid*

54 'TV reporter hacked to death in Jaffna' (refworld, 29 May 2008) <https://www.refworld.org/docid/4843fd381c.html>

55 'Justice for killed journalists- Waiting for Godot' (Sri Lanka Brief, 07 May 2013) <https://srilankabrief.org/justice-for-killed-journalists-waiting-for-godot/>

56 'Press Freedom and Freedom of Expression in Sri Lanka: Struggle for survival' (International Press Freedom and Freedom of Expression Mission to Sri Lanka, January 2007)

57 'Relangi Selvarajah' (People Pill) <https://peoplepill.com/people/relangi-selvarajah> accessed 19 February 2022.

Darisanam.<sup>58</sup> The LTTE had also criticised her for broadcasting anti-LTTE programmes.

## **Abduction and Torture**

### **Poddala Jayantha**

Poddala Jayantha, who was at the time the former General Secretary of the Sri Lanka Working Journalists' Association (SLWJA), was abducted by a white van and severely assaulted in June, 2009.<sup>59</sup> Jayantha was a media rights activist who raised public awareness of media suppression.<sup>60</sup> When Associate Editor of 'The Nation', Keith Noyahr, was abducted and tortured, the SLWJA and few other organisations held a public demonstration in 2008 condemning the incident and seeking justice. Following this, the Defence Secretary at the time, Gotabaya Rajapaksa, had summoned Jayantha and a colleague who were instrumental in holding the protest demonstration, to his office and admonished that as Lake House employees they could not work against the Government and that they were working against the Army.<sup>61</sup>

The assault and torture meted out to Jayantha resulted in broken bones in both his legs, fingers smashed, body burnt, beard and

58 'Sri Lanka: Justice for Media Workers' (Amnesty International) ASA 37/014/2008 <https://www.amnesty.org/en/documents/asa37/014/2008/en/>

59 United Nations, 'Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka' (31 March 2011) para 64.

60 D.B.S.Jeyaraj, 'Journalist-Activist Poddala Jayantha's White-Van Ordeal' (Daily Mirror, 13 May 2017) <<https://www.dailymirror.lk/dbs-jeyaraj-column/Journalist-Activist-Poddala-Jayantha-s-White-Van-Ordeal/192-128823>> accessed 02 February 2022.

61 *ibid*

haircut and thrust into his mouth.<sup>62</sup> At the time the police reportedly conducted investigations,<sup>63</sup> however, no one was held responsible. In an interview he said that if he had toed the Government line, he could have survived unharmed.<sup>64</sup> He also alleged that he suspected that the former Defence Secretary, Gotabaya Rajapaksa, was involved, and in any event, the then Mahinda Rajapaksa Government is responsible as his ordeal took place during the Rajapaksa tenure.<sup>65</sup> Before his abduction, State controlled media reportedly called for the stoning and expulsion of journalists who grew beards and took money from tigers.<sup>66</sup> This referred to Jayantha who was known for his beard. Having fled the country, he returned in 2017 to make a complaint to the Criminal Investigation Department in order to have his abduction and assault investigated.<sup>67</sup>

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62 Krishan Francis, 'Reporter seeks justice for 'white van' torture in Sri Lanka' (AP News, 25 June 2017) <https://apnews.com/article/c3901fa9cd614fdb9b845e48441a1e14> accessed 16 November 2021.

63 'Sri Lanka media activist assaulted-police' (Reuters, 01 June 2009) <https://www.reuters.com/article/idUSL1502100>

64 Piyumi Fonseka, 'I could have survived unharmed if I toed the Govt. line: Poddala Jayantha' (Daily Mirror, 23 June 2017) <https://www.dailymirror.lk/article/I-could-have-survived-unharmed-if-I-toed-the-Govt-line-Poddala-Jayantha-131450.html> accessed 31 January 2022.

65 *ibid*

66 D. B. S. Jeyaraj, 'Journalist-Activist Poddala Jayantha's White-Van Ordeal' (Daily Mirror, 13 May 2017) <<https://www.dailymirror.lk/dbs-jeyaraj-column/Journalist-Activist-Poddala-Jayantha-s-White-Van-Ordeal/192-128823>> accessed 02 February 2022.

67 'Poddala Jayantha returns to Sri Lanka to make a complaint on his abduction and assault in 2009' (Sri Lanka Brief, 21 June 2017) <https://srilankabrief.org/poddala-jayantha-return-to-sri-lanka-to-complaint-on-his-abduction-and-assault/> accessed 31 January 2022.

## Unjust Laws Stifling Dissent

### J. S. Tissainayagam

Jeyaprakash Tissainayagam, was the editor of the news website Outreach Sri Lanka and also wrote for the Sunday Times and the now defunct North Eastern Monthly magazine.<sup>68</sup> He is the first journalist to be convicted under the Prevention of Terrorism Act, No. 48 of 1979 (“PTA”).<sup>69</sup> He was considered a “prisoner of conscience” by Amnesty International as he was jailed solely for exercising his right to freedom of expression through his profession.<sup>70</sup> The then US President, Barack Obama, said that Tissainayagam and other journalists like him were “guilty of nothing more than a passion for truth and a tenacious belief that a free society depends on an informed citizenry”.<sup>71</sup>

Tissainayagam was arrested in March 2008.<sup>72</sup> He was accused of obtaining money from the LTTE to administer the outreachsl.com website, though it was funded by a grant provided by a foundation backing local initiatives in conflict transformation, which in turn was funded by the German development agency,

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68 ‘J S Tissainayagam’ (Literary Review, 16 November 2021) <https://literaryreview.co.uk/j-s-tissainayagam>

69 United Nations, ‘Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka’ (31 March 2011) para 414.

70 ‘Sri Lanka jails journalist for 20 years for exercising his right to freedom of expression’ (Amnesty International, 1 September 2009) < <https://www.amnesty.org/en/latest/news/2009/09/sri-lanka-condena-periodista-20-anos-prision-ejercer-libertad-expresion-20090901/>> accessed 16 November 2021.

71 ‘J. S. Tissainayagam’ (People Pill) <https://peoplepill.com/people/j-s-tissainayagam> accessed 16 November 2021.

72 ‘Sri Lanka jails journalist for 20 years for exercising his right to freedom of expression’ (Amnesty International, 1 September 2009) < <https://www.amnesty.org/en/latest/news/2009/09/sri-lanka-condena-periodista-20-anos-prision-ejercer-libertad-expresion-20090901/>> accessed 16 November 2021.



GTZ.<sup>73</sup> Subsequently in August 2008, he was charged under the PTA for writing material intended to incite disharmony among ethnic communities and bring discredit on the Government, with printing and publishing such material and obtaining money to do this from NGOs.<sup>74</sup> Tissainayagam's confession allegedly obtained by torture was considered voluntary and admissible as evidence in his trial.<sup>75</sup> Thereafter, in August 2009, the Colombo High Court convicted him of 'causing communal disharmony' by writing two articles and was sentenced to 20 years of rigorous imprisonment.<sup>76</sup> This is reportedly the harshest sentence meted out to a journalist in Sri Lanka.<sup>77</sup>

Tissainayagam's work reflected the minority point of view,<sup>78</sup> but he was accused of going beyond the freedom of expression guaranteed by the Constitution. His indictment was based on his critical views regarding the Government's treatment of Tamil civilians affected by the armed conflict in two articles.<sup>79</sup> The first article included an editorial headlined 'Providing security to Tamils now will define north-eastern politics of the future'

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73 International Truth and Justice Project, Sri Lanka: Briefing Note 6: Summary Index of Emblematic Cases (February 2021) 4.

74 *ibid*

75 *ibid*

76 *ibid*

77 'Tissa's publisher 'to be released'' (BBC Sinhala, 20 October 2009) < [https://www.bbc.com/sinhala/news/story/2009/10/091020\\_tissa\\_publisher](https://www.bbc.com/sinhala/news/story/2009/10/091020_tissa_publisher)> accessed 16 November 2021.

78 Lydia Polgreen, 'Sri Lankan Editor Lauded by Obama Is Sentenced to 20 Years' (New York Times, 31 August 2009) < <https://www.nytimes.com/2009/09/01/world/asia/01lanka.html>> accessed 16 November 2021.

79 'Sri Lanka jails journalist for 20 years for exercising his right to freedom of expression' (Amnesty International, 1 September 2009) < <https://www.amnesty.org/en/latest/news/2009/09/sri-lanka-condena-periodista-20-anos-prision-ejercer-libertad-expresion-20090901/>> accessed 16 November 2021.

published in July 2006 which concluded: “It is fairly obvious that the [G]overnment is not going to offer them any protection. In fact, it is the [S]tate security forces that are the main perpetrator of the killings.”<sup>80</sup> The second article published in November 2006 accused the Government of starving and endangering civilians to further military objectives.<sup>81</sup>

In January 2010, Tissainayagam was granted bail pending appeal.<sup>82</sup> Four months later, owing to international pressure, he received a presidential pardon.<sup>83</sup> While the pardoning is welcome as it overturned Tissainayagam’s conviction, it by no means redresses the fact that he had been tried under an unjust law that continues to victimise those exercising legitimate dissent. Justice in such a case could only be achieved by ensuring that the PTA is repealed so that journalists, government critics and members of minority communities will not be arrested under it and detained for prolong periods unjustifiably.

### **Parameswaree Maunasami**

Parameswaree Maunasami, a journalist for the weekly newspaper, Mawbima, too was arrested in November 2006 under the PTA

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80    ibid

81    ibid

82    International Truth and Justice Project, Sri Lanka: Briefing Note 6: Summary Index of Emblematic Cases (February 2021) 4.

83    International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 04.

allegedly for her work covering the war between the Government and the LTTE.<sup>84</sup> She was held for four months without charge or trial under the PTA.

She was reportedly the first to write about the white Toyota HiAce vans with tinted glass and no number plates being used to abduct Tamils.<sup>85</sup> The Defense Secretary at the time (who since was elected as President and ousted) Gotabaya Rajapaksa mentioned her by name on a television interview, accusing her of being a terrorist.<sup>86</sup>

### **Protected Speech**

Freedom of Expression applies not only to information or ideas considered inoffensive, but also to those that “offend, shock or disturb the State or any sector of the population”.<sup>87</sup> Sri Lanka’s Supreme Court jurisprudence affirms criticism of the Government is encompassed in the constitutional guarantee of free speech and expression. In *Joseph Perera v The Attorney General*, the Supreme Court explained that “ideas having the slightest social importance, unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion” are protected under the constitutional guarantee of free speech

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84 ‘U.S. Department of State Country Report on Human Rights Practices 2006- Sri Lanka’ (Refworld) < <https://www.refworld.org/docid/45f0569c19.html> > accessed 16 November 2021.

85 ‘Hearing before the Sub Committee on Near Eastern and South and Central Asian Affairs’ (Committee on Foreign Relations, 24 February 2009) <https://www.govinfo.gov/content/pkg/CHRG-111shrg56129/html/CHRG-111shrg56129.htm> accessed 16 November 2021.

86 <https://cpj.org/reports/2009/02/failure-to-investigate-sri-lankan-journalists-unde/>

87 *Handyside v The United Kingdom* Application no. 5493/72 (ECtHR, 7 December 1976) <https://www.bailii.org/eu/cases/ECHR/1976/5.html>

and expression.<sup>88</sup> The Court further asserted that “criticism of the [G]overnment, however unpalatable it be, cannot be restricted or penali[s]ed unless it is intended or has a tendency to undermine the security of the State or public order or to incite the commission of an offence”.<sup>89</sup> In similar vein, in *Channa Pieris v. the Attorney General*, the Supreme Court pointed out that free speech entails not only the right to express generally accepted ideas, but also “dangerous, aggravating and deviant ideas which the community hated and from which it recoiled”.<sup>90</sup> Thus, the ambit of protection afforded by the guarantee of free speech is wide and covers critical reporting and opinions as well. In fact, the Supreme Court has held that a democracy requires not merely that dissent be tolerated, but that it be ‘encouraged’ as well.<sup>91</sup>

The examples above demonstrate that the speech concerned in such crimes is of a varied nature, including that in favour/against the Government and that in favour/against the LTTE. In the cases of *Sugirtharajah*, *Sivaram*, *Nimalarajan*, *Poddala Jayantha*, *Tissainayagam* and *Maunasami* the speech exercised was critical of the Government. In the cases of *Devakumar* and *Selvarajah*, the speech involved was critical of the activities of the LTTE.

The right of freedom of expression is not an absolute right. It can be restricted in the interests of racial and religious

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88 [1992] 1 SLR 199, 225.

89 *ibid.*

90 [1994] 1 SLR 1, 134.

91 *Deshapriya and another v Municipal Council, Nuwara Eliya and others* [1995] 1 SLR 362, 370.

harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence<sup>92</sup> as well as in the interests of national security, public order, the protection for public health or morality, or in the interests of rights and freedoms of others or because of the general welfare of a democratic society.<sup>93</sup> Further, Article 15 (8) of the Constitution stipulates that the operation of this freedom in the application to the armed forces, police force and other forces charged with the maintenance of public order can be restricted in the interests of the proper discharge of their duties and the maintenance of discipline among them. However, in all such instances, such restrictions should be prescribed by law.<sup>94</sup> Thus, extra-judicial forms of violence are unwarranted. International law prohibits the deprivation of the right to life, and affirms the right to be free from torture even during a public emergency.

Thus, when journalists write and publish material that criticises the State or even a non-state actor, it does not by any means give a *carte blanche* to the State or the non-state actor to perpetrate violence against the journalist. The Human Rights Committee has stated that attacks such as arbitrary arrest, torture, threats to life and killings on a person because of his or her exercise of freedom of opinion or expression are not compatible with Article 19 of the ICCPR.<sup>95</sup> In similar vein, the ECtHR and the Inter-American Court of Human Rights have declared State agents assaulting journalists while covering an unauthorised

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92 Constitution of Sri Lanka, art 15(2)

93 *ibid* art 15(7).

94 *ibid* art 15(2) and art 15(7).

95 Human Rights Committee, General Comment No.34 CCPR/C/GC/34  
Para 23

demonstration or anti-government demonstration to be a violation of freedom of expression.<sup>96</sup>

Further, interference with freedom of expression in the form of criminal sanctions has a chilling effect on the exercise of that freedom.<sup>97</sup> Repressive laws, such as the PTA, victimise a journalist's legitimate right of expression. The existence of such a legislation that fails to guarantee basic rights to those arrested, that permits arbitrary arrests for prolonged detention periods stifle dissent and leads to self-censorship. This is contrary to the duty of the Government to encourage dissent. In the cases of Tissainayagam and Maunasami, 'law' (the PTA) was utilised to arrest them and in the subsequent conviction of Tissainayagam. The African Court of Human and Peoples' Rights overruling the conviction of a journalist for publishing newspaper articles alleging corruption by a state prosecutor, stated that the conviction was a disproportionate interference with the applicant's guaranteed rights to freedom of expression.<sup>98</sup> Similarly, the conviction of Tissainayagam was a disproportionate interference into his exercise of freedom of

96 Najafli v. Azerbaijan Application no. 2594/07 (ECtHR, 2 October 2012) para 68; Luis Gonzálo "Richard" Vélez Restrepo v. Colombia ser.C No.248 (Global Freedom of Expression, Columbia University) <<https://globalfreedomofexpression.columbia.edu/cases/luis-gonzalo-richard-velez-restrepo-v-colombia/>>

97 Mariya Alekhina and Others v. Russia Application no. 38004/12 (ECtHR, 17 July 2018) Para 227 < [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-184666%22\]}>](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-184666%22]}>) ; Mariya Alekhina and Others v. Russia (Global Freedom of Expression Columbia University) < <https://globalfreedomofexpression.columbia.edu/cases/mariya-alekhina-others-v-russia/>>

98 Lohé Issa Konaté v. The Republic of Burkina Faso App. No. 004/2013 (Global Freedom of Expression, Columbia University) < <https://globalfreedomofexpression.columbia.edu/cases/lohe-issa-konate-v-the-republic-of-burkina-faso/>>

expression. His case is emphatic of how journalists can even be convicted unjustly within the framework of the law and be silenced. The ICCPR Act of 2007 too has been used to stifle dissent in Sri Lanka.<sup>99</sup>

When journalists are targeted and victimised for their legitimate exercise of free speech, it has a chilling effect on the journalist's right of expression as well as the public's right to receive information. Thus, accountability for such crimes ensures that the right of free speech is protected in its fullest essence. When there is no impunity for such crimes, journalists could engage in their profession without any form of self-censorship which ultimately would serve the public interest.

### **Accountability for Crimes Committed Against Journalists**

Impunity for crimes committed against journalists signals a failure of justice and has a detrimental effect on democracy. The chilling effect of such impunity affects not only the journalist under attack, but the community of journalists who would feel threatened by such attacks. The cases point out several reasons as to why there was no accountability for the crimes committed despite overwhelming suspicion of who may have been involved. The reasons are:

1. No investigation conducted;
2. The lack of evidence thus suspending the investigation;

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99 'Misuse of ICCPR Act and Judicial System to Stifle Freedom of Expression in Sri Lanka' (Civicus Monitor, 05 July 2019) <https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/>

3. Undue influence in the form of superior orders to halt investigations;
4. Vital witnesses failing to appear before court;
5. Police covering up vital evidence;
6. Police failing to interrogate key suspects and use existing evidence;
7. The lack of political will to pursue investigations;
8. Being dismissive of the work of certain journalists and discrediting them as being “terrorists”;
9. Failing to recognise that a crime may have been committed that warrants an investigation; and,
10. Certain laws are abusive leaving no viable recourse for justice.

The UN Principles to Combat Impunity recognise the inalienable right to know the truth concerning heinous crimes and the circumstances and reasons that led to the perpetration of such crimes.<sup>100</sup> It specifically recognises the ‘imprescriptible right to the truth’ of victims and their families about the circumstances in which the violations took place and in the event of death or disappearance, the victim’s fate.<sup>101</sup> States are under an obligation to take appropriate action to guarantee the right to know. Such action includes ensuring the independent and effective operation of the Judiciary as well as by other non-judicial processes that complement the role of the Judiciary. The UN Principles suggest the creation of a truth commission

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100 Principle 2

101 Principle 4



or a commission of inquiry to establish the facts surrounding those violations.<sup>102</sup>

The UN Human Rights Council adopted resolution 33/2 in 2016 commits States to act to prevent, protect and prosecute attacks against journalists. The obligation to prevent encompasses creating and maintaining an enabling environment for journalists, ensuring national laws (such as the PTA, ICCPR Act) do not interfere with journalists' independence, releasing arbitrarily arrested or detained journalists, not spying on journalists or intercepting their communications, allowing encryption and anonymity, protecting journalists' confidential sources, training stakeholders such as judges, law enforcement authorities and the military. The obligation to protect includes publicly, unequivocally and systemically condemning violence and attacks, establishing early warning and rapid response mechanisms, regularly monitoring and reporting on attacks against journalists, protecting journalists covering protests and elections, protecting media outlets against attacks and forced closure, protecting journalists in armed conflict as civilians. In relation to the obligation to prosecute, the resolution stipulates that States should adopt strategies to combat impunity, investigate crimes, prosecute, ensure that victims have access to appropriate remedies, and ensure that efforts to address impunity are backed by political will and adequate resources.

The State is also under an obligation to ensure the protection of journalists from attacks by such non-state parties. In such instances where non-state parties (such as the LTTE) have

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102 Principle 5.

been involved in the perpetration of the crimes, the State has a responsibility to investigate such crimes and ensure that there is accountability and justice dispensed.

Authorities should investigate such crimes on their own initiative irrespective of whether a family member has filed/withdrawn a complaint. The investigation should be conducted thoroughly, impartially, independently and promptly.<sup>103</sup> A decision to refuse to initiate or terminate an investigation may be taken only by an independent and competent authority in line with the criteria for an effective investigation.<sup>104</sup> Such a decision should be challengeable by a judicial process. In *Abdoulaye Nikiema v. The Republic of Burkina Faso*, the African Court of Human and People's Rights held that by failing to investigate the murder of a journalist, Burkino Faso created a chilling effect on the freedom of expression of other journalists.<sup>105</sup> Thus, undue influence on investigations, police concealing vital evidence, police failing to interrogate key suspects and use existing evidence effectively runs contrary to the purpose of holding an effective investigation.

Perpetrators including those who command, conspire to commit, aid and abet or cover up such crimes should be brought to justice.<sup>106</sup> The Guidelines for Prosecutors on Cases

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103 Radu Florin Geamanu, 'Freedom of Expression and Violence against Journalists' (2017) 24 *Lex ET Scientia Int'l J* 118, 126.

104 *ibid.*

105 No. 013/2011 (28 March 2014) (Global Freedom of Expression, Columbia University) <https://globalfreedomofexpression.columbia.edu/cases/abdoulaye-nikiema-ernest-zongo-blaise-ilboudo-burkinabe-human-and-peoples-rights-movement-v-the-republic-of-burkina-faso/>

106 Sabin Guidelines for Prosecutors on Cases of Crimes Against

of Crimes Against Journalists states that all crimes against journalists should be prosecuted when both the ‘sufficiency of the evidence’ and ‘public interest standards’ are met.<sup>107</sup> The prosecutor should initiate a contextual analysis of the nexus between the alleged crime and the past and present media activities of the victim.<sup>108</sup> This contextual analysis should be carried on early in the investigation process to identify potential suspects and motives.<sup>109</sup> Such evidence where admissible can be submitted to court in support of motive and for sentencing purposes.<sup>110</sup> The prosecutors also should ensure that confidential data that may lead to the identification of a source are not revealed during an investigation/proceedings.<sup>111</sup> The Attorney General should perform his duties fairly, consistently and expeditiously and must ensure due process.<sup>112</sup> He should also give due attention to the prosecution of human rights violations by public officials, such as, where the State is alleged to be complicit in a crime committed against a journalist. The State could also consider appointing special investigative units or specialised prosecutors.<sup>113</sup> For instance, in Mexico the Special Prosecutor for Crimes against Journalists (now called the Special Prosecutor’s Office for Crimes against Freedom of Expression)

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Journalists (UNESCO and International Association of Prosecutors, 2020) CI-2020/FEJ/ME-2 5.

107 *ibid.*

108 *ibid.*

109 *ibid.*

110 *ibid.*

111 *ibid.*

112 International Commission of Jurists, Authority without Accountability (November 2012, Switzerland) 152

113 See Guidelines for Prosecutors on Cases of Crimes Against Journalists (UNESCO and International Association of Prosecutors, (2020) CI-2020/FEJ/ME-2 5.

was created as part of the federal Attorney General's Office in 2016 to address impunity in crimes against journalists.<sup>114</sup> Further, the State should ensure the independence and impartiality of the Judiciary.<sup>115</sup> Thus, it is paramount for freedom of expression to be guaranteed in its true essence that the Judiciary should act independently without undue influence whether direct or indirect, that the unwarranted powers of the President be restricted and the President to be held to account. Judicial proceedings to investigate such crimes should conclude within a reasonable time.<sup>116</sup> The sentence imposed should be effective, proportionate and appropriate to the offence committed.<sup>117</sup>

The State should ensure that victims and their families have access to appropriate restitution, compensation and assistance.<sup>118</sup> In 2015, the then Prime Minister Ranil Wickremesinghe announced a compensation scheme for families of 44 slain journalists, a majority who had been based in the North, who were killed while on duty for political reasons.<sup>119</sup> However, granting such compensation alone is inadequate where an effective

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114 Eduardo Bertoni, *Prevent and Punish: In search of solutions to fight violence against journalists* (UNESCO, 2015) 16

115 Radu Florin Geamanu, *'Freedom of Expression and Violence against Journalists'* (2017) 24 *Lex ET Scientia Int'l J* 118, 126.

116 *ibid.*

117 *ibid.*

118 *Guidelines for Prosecutors on Cases of Crimes Against Journalists* (UNESCO and International Association of Prosecutors, 2020) CI-2020/FEJ/ME-2 5.

119 'Compensation soon for 44 slain media persons: PM' (the Sunday Times, 13 December 2015) <https://www.sundaytimes.lk/151213/news/compensation-soon-for-44-slain-media-persons-pm-175058.html>

investigation is not conducted and those responsible are not held to account.<sup>120</sup>

Locally, journalists have attempted to use the fundamental rights jurisdiction for a declaration that the crimes committed against them violate their fundamental rights and to seek compensation whereby the crime committed against them would be recognised to some extent. Even though prosecution may not follow a successful FR application, a successful FR application impliedly recognises that the petitioners' rights were violated. The Supreme Court could also recommend to the AG to prosecute. For instance, in 2021, the legal team of Lanka e-News defence correspondent Keerthi Rathnayake filed an FR application alleging, *inter alia*, that after his arrest, he was extensively questioned in a threatening manner about his articles and sources for his articles, which violated his constitutionally protected right of freedom of speech and expression.<sup>121</sup>

According to reports, Rathnayake's reporting was critical of the Sri Lankan police, army and the government.<sup>122</sup> He was initially arrested in August 2021 and his detention was extended for another 90 days under the Prevention of Terrorism Act.<sup>123</sup> In

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120 See Piyumi Fonseka, 'I could have survived unharmed if I toed the Govt. line: Poddala Jayantha' (Daily Mirror, 23 June 2017) <https://www.dailymirror.lk/article/I-could-have-survived-unharmed-if-I-toed-the-Govt-line-Poddala-Jayantha-131450.html>

121 'Sri Lanka: Arrest and detention of journalist Keerthi Rathnayake: Fundamental Rights petition filed at SC' (Sri Lanka Brief, 10 November 2021) <https://srilankabrief.org/sri-lanka-arrest-and-detention-of-journalist-keerthi-rathnayake-fundamental-rights-petition-filed-at-sc/>

122 Keerthi Rathnayake (CPJ) <https://cpj.org/data/people/keerthi-ratnayake/>

123 [https://srilankabrief.org/wp-content/uploads/2021/12/Keerthi-](https://srilankabrief.org/wp-content/uploads/2021/12/Keerthi-84)

February 2022, he was released on bail.<sup>124</sup>

Where a local remedy does not seem possible, attempts have been made to seek accountability in the international fora. A case in point is Lasantha Wickrematunga's case being taken up at the People's Tribunal on the Murder of Journalists in Hague.<sup>125</sup>

In September 2022, the Tribunal issued an indictment against the Government of Sri Lanka based on the right to life, right to freedom of expression and the right to an effective remedy and found the State to be guilty of his murder.<sup>126</sup>

## Conclusion

Accountability for emblematic cases in Sri Lanka is a far cry from justice. Even in the extremely rare cases where the perpetrators have been convicted of their crime, the conviction

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Rathnayka-detention-order.jpeg

124 'Freelance journalist Keerthi Ratnayake granted bail' (Daily Mirror, 09 February 2022) [https://www.dailymirror.lk/latest\\_news/Freelance-journalist-Keerthi-Ratnayake-granted-bail/342-230779](https://www.dailymirror.lk/latest_news/Freelance-journalist-Keerthi-Ratnayake-granted-bail/342-230779)

125 'The People's Tribunal on the Murder of Journalists' (CPJ, 2 November 2021) <https://cpj.org/2021/11/tribunal-for-murdered-journalists-to-open-in-the-hague/>

126 'People's Tribunal indicts GoSL over Lasantha's 2009 murder' (Newswire, 20 September 2022) <https://www.newswire.lk/2022/09/20/peoples-tribunal-indicts-gosl-over-lasanthas-2009-murder/>; 'People's tribunal finds Sri Lankan state guilty of Lasantha Wickrematunge's murder' (Daily FT, 21 September 2022) <https://www.ft.lk/news/People-s-tribunal-finds-Sri-Lankan-state-guilty-of-Lasantha-Wickrematunge-s-murder/56-740090>

has been overturned on appeal (Vishwamadu rape case)<sup>127</sup> or the perpetrator pardoned by the President (Mirusuvil massacre)<sup>128</sup>. Certain scholars have advocated for a dedicated international instrument targeting violence against journalists which also introduces a compliance-monitoring mechanism to improve the protection of journalists.<sup>129</sup> They argue that the existing international law regime, as found in international human rights instruments and international humanitarian law, offers minimal recognition of the role of the media in informing the public, the risks of harm that the media face, and the consequences for the public of silencing the media.<sup>130</sup> For that reason they recommend for violations of journalists' right to freedom of expression to fall under a distinct category of human rights violations.<sup>131</sup>

In a democracy, killing, abducting and assaulting journalists, as well as convicting them for engaging in their profession deeply undermine freedom of speech and expression. Past abuses must be investigated and those responsible held to account. The State should ensure that such abuses do not take place in the future.

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127 Four Sri Lankan soldiers were convicted of the gang rape of a Tamil woman from Vishwamadu in 2010 and was sentenced to 25 years imprisonment. In October 2019, they were acquitted on appeal: International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 03.

128 A soldier was convicted for the killing of 8 Tamils including 3 children. He was pardoned by President Gotabhaya Rajapaksa in 2020: International Truth and Justice Project, Sri Lanka Briefing Note 5: The Emblematic Cases (February 2021) 04.

129 Carmen Draghici and Lorna M Woods, 'Killing Journalists Is Not Media Regulation: Private Rights, Collective Wrongs and the Impact of Impunity' (2019) 28 *Transnat'l L & Contemp Probs* 263.

130 *ibid.*

131 *ibid.*

Time and again, laws such as the PTA and the ICCPR Act have been used to curtail dissent in Sri Lanka. The legislature should ensure that laws enacted, or amendments introduced are consistent with the Constitution. It is only then that the constitutionally guaranteed freedom of expression will be fully protected and upheld.





# A Tale of Two Governments: An Overview of the Lack of Will to Prosecute in Several Emblematic Cases

-Bhagya Samarakoon

*“To dream the impossible dream  
to right the unrightable wrong”<sup>1</sup>*

## Introduction

Impunity in relation to human rights violations in Sri Lanka is nothing new. The insurrections by the Janatha Vimukthi Peramuna (JVP) in the 1970's and 1980's, the anti-Tamil pogrom of 1983 with State backing and the civil war between the Government and the LTTE (Liberation Tigers of Tamil Eelam) all bore witness to an increasingly disturbing pattern of extra-judicial killings and cycles of violence that were the bloody legacy of a complex political landscape, and long sown ethnic discrimination. When confronted with the question of human rights, successive governments time and time again have taken several measures, whether in the form of Presidential Commissions of Inquiry, criminal justice commissions or criminal proceedings to have the appearance of addressing concerns for accountability. However, as an absence of prosecutions or convictions shows, these have often been superficial attempts at accountability.

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1 The Impossible Dream (1972)

Nevertheless, the dialogue on human rights was to take a new dimension towards the final years of the civil war. While the war was raging ferociously in the North and the East, there was almost unprecedented repression of journalists and free media in the South. Increasingly, human rights advocates, victim groups (both inside and outside Sri Lanka), civil society, the Tamil diaspora and the international community began to seek answers for violations of human rights that were taking place during the wartime years predominantly in the North but also in the South. In 2009, the Rajapaksa Government, fresh from winning the war, was hard pressed to find a solution to allegations of human rights violations committed by or with the involvement of the State armed forces. However, the Government enjoyed the popular support of the people who were distracted by the rhetoric of patriotism and gained a resounding victory at the Presidential Elections of 2010. It seemed highly unlikely that any proper investigation into alleged war crimes and violations of international humanitarian law would take place, then.

However, in 2015, the tide seemed about to turn. The Yahapalana Government (good governance) came to power in 2015 headed by President Maithripala Sirisena and a ‘good and benevolent government seemed a possibility to many’.<sup>2</sup> Those who held such high hopes were soon to be disillusioned, however, as the new regime veered off the course of democracy, rule of law and good governance to smear its name with corruption, inefficiency and disunity within the government itself.

2 ‘Sri Lanka’s gradual return to normalcy’, Groundviews, 18th February 2018

<<https://groundviews.org/2018/02/18/sri-lankas-gradual-return-to-normalcy/>>

At the time this chapter is being written, the Rajapaksa regime which again won with an overwhelming vote in 2019 has spectacularly lost the popular mandate though they still retain influence within the Government. The country is experiencing an unprecedented economic and political crisis. Transitional justice and accountability seem ever more distant things on the far horizon. In such a context, this chapter proposes to chart how both the Rajapaksa and the Yahapalana regimes failed the citizens of this country by their absolute absence of willingness to prosecute crimes and bring to justice the perpetrators of those crimes.

### **The Long Wait for Accountability in the Time of the Two Governments**

Ever since the war ended, regardless of the regime in power, transitional justice and accountability for crimes committed during the war have been an elusive goal. However, quite remarkably, following the end of the war, there was increasing international pressure on the Government headed by President Mahinda Rajapaksa to initiate investigations into the alleged violations of human rights which occurred during the war, at the hands of both the LTTE and the State armed forces. With the internal conflict having come to an end, the onus was now on the Sri Lankan Government to address questions of accountability.

Sri Lanka had come under review of the Universal Periodic Review of the United Nations Human Rights Council (“UNHRC”) in May 2008 for the first time and the Government

undertook that “all alleged perpetrators of violations of human rights would be prosecuted” and stated further that it was “repulsed by the killing of media workers”.<sup>3</sup> Notably, in the review, Canada specifically referred to the public hearings of the Presidential Commission of Inquiry related to the murders of workers of Action Contre la Faim and of the five students in Trincomalee, which cases will be discussed later in this chapter.<sup>4</sup> In June 2010, the Secretary General of the United Nations appointed a Panel of Experts on Accountability chaired by Marzuki Darusman. The Sri Lankan Government was quick to condemn this move and alluded to a newly appointed Lessons Learnt and Reconciliation Commission of Sri Lanka (“LLRC”) appointed by the President under the Commissions of Inquiry Act, which would make “a most significant contribution to the further strengthening of national amity, through a process of restorative justice”.<sup>5</sup> If these were genuinely the lofty ambitions of that commission, in hindsight, they did not quite come to fruition. As the very name by which the Commission was called signified, the Commission was mandated with power not only to inquire into the matters that took place between 21 February 2002 and 19 May 2009, but also with the responsibility, broadly speaking, of identifying errors of the past and ensuring non-repetition of the same.

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3 Report of the Working Group on the Universal Periodic Review : Sri Lanka (2008: UNHRC)

<<https://digitallibrary.un.org/record/638815?ln=en> >

4 *ibid.*

5 Statement on the Appointment of the Sri Lanka - Panel of Experts by the Secretary General of the United Nations <<https://slembassysa.org/new/media-center/news/429-35statement-on-the-appointment-of-the-sri-lanka-panel-of-experts-by-the-secretary-general-of-the-united-nations.html>>

The final report of the LLRC has been criticised for its prejudiced stance; for instance, the report concludes that in certain cases further investigations are warranted to establish the responsibility of members of the armed forces for civilian deaths, war crimes and violations of International Humanitarian Law, though it maintains, “this may not have been with an intent to cause harm”.<sup>6</sup> In 2012, following a United Nations Human Rights Council resolution that called on the Government to implement the recommendations of the LLRC, a National Action Plan was adopted.

Nevertheless, many years later, there has been no action despite the formulation of the action plan.<sup>7</sup> Critics have also pointed out the disparities between the LLRC recommendation and the proposed action in the Action Plan, the exclusion of civil society and most of all, the numerous instances where no activities are proposed to achieve a recommendation.<sup>8</sup> All action taken by this Government to seemingly further accountability, thus, seem a mere attempt to appease the international community and ward off any international mechanisms.

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6 Release of the Lessons Learnt and Reconciliation Commission (LLRC) Report, Centre for Policy Alternatives, January 2011 <<https://www.cpalanka.org/release-of-the-lessons-learnt-and-reconciliation-commission-llrc-report/>>

7 Action Plan, but No Action, international Crisis Group, 26 September 2012 <<https://www.crisisgroup.org/asia/south-asia/sri-lanka/action-plan-no-action>>

8 Commentary on the Progress Achieved in Implementing the National Plan of Action to Implement the Recommendations of the Lessons Learnt and Reconciliation Commission, Centre for Policy Alternatives, 12 February 2014 <[https://www.cpalanka.org/commentary-on-the-progress-achieved-in-implementing-the-national-plan-of-action-to-implement-the-recommendations-of-the-lessons-learnt-and-reconciliation-commission/#\\_ftn8](https://www.cpalanka.org/commentary-on-the-progress-achieved-in-implementing-the-national-plan-of-action-to-implement-the-recommendations-of-the-lessons-learnt-and-reconciliation-commission/#_ftn8)>

By 2015, the Yahapalana Government had come into power.<sup>9</sup> This Government which rode to power on the expectations and hopes of the public for a change of political culture initially took several steps towards furthering accountability. In March 2017, Mahinda Rajapaksa, Sri Lanka's former President penned an article in the Colombo Telegraph criticising Yahapalana Government's pledge to implement in full the Sri Lankan Government co-sponsored UNHRC resolution of 2015.<sup>10</sup> He went on further to call the move by the Yahapalana Government to accept without any reservations the report of the Office of the High Commissioner on Human Rights ("OHCHR") of September 2015, 'the great betrayal in Geneva'. The OHCHR report had accused the Sri Lankan Government of a whole range of war crimes including indiscriminate killings of non-combatants, torture, rape, illegal detention, abduction and deprivation of humanitarian assistance during the civil war.

Now that the term of the Yahapalana Government has unfolded before us, it remains to examine to what extent the Yahapalana Government was able to follow through with its promises in relation to accountability for human rights violations. The UNHRC resolution of 2015 spoke of the Government's proposal to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human

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9 Presidential elections were held on 8th January 2015, two years ahead of schedule. The incumbent President Mahinda Rajapaksa was the candidate of the United People's Freedom Alliance (UPFA) seeking a third term in office. The United National Party (UNP) led opposition coalition selected Maithripala Sirisena as its common candidate.

10 Mahinda Rajapaksa, 'The Great Betrayal in Geneva', Colombo Telegraph, 30 March 2017 <<https://www.colombotelegraph.com/index.php/the-great-betrayal-in-geneva/>>

rights and violations of International Humanitarian Law and to establish a commission for truth, justice, reconciliation and non-recurrence, an office for missing persons and an office for reparations.<sup>11</sup>

Out of these proposals, a judicial mechanism to prosecute human rights violations and a commission for truth and justice, being the more controversial of the Government's proposals, never materialised. Even the office for missing persons and the office for reparations, though established, did not function as envisaged.

As one Sri Lankan writer notes, at the passing of the Office of Missing Persons Law, the euphoria that was present in Colombo was conspicuously absent in the northern peninsula among the very people for whom this piece of legislation was primarily intended.<sup>12</sup> She writes,

*“One mother brandished a newspaper article with a photograph of a line of hopeless faces along the security perimeter of an army camp post 2009 and wailed ‘that is my child but when I go to that camp and ask where she is, they only tell me that she was never there.’ Will this Office give me answers for what happened to my child and will it give me justice when I am asked to go before it and cry all over again?”*<sup>13</sup>

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11 UNGA Resolution A/ HRC/ RES/ (Oct 2015)

12 K. Pinto Jayawardena, ‘Cheers in Colombo and Apathy in Jaffna’, Focus on Rights, Sunday Times, 28th August 2016, extracted from the Asian Human Rights Commission webpage <<http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-032-2016/>>

13 *ibid.*



The resulting picture is a pattern of compromises even during the Yahapalana Government where a tenacious grip on power by some individuals ensured the immunity of the many. This is amply reflected in the rather poignant statement by a victim in an emblematic case.

*“I never got the opportunity to meet with the president in private...Although I was not able to meet him, the army officials involved and their families could meet him...”<sup>14</sup>*

Nevertheless, several initiatives were taken during the Yahapalana Government seemingly to further accountability. They can be characterised as ‘insincere human rights behaviour’ or half-hearted acts that lacked the necessary political will and support at best. Insincere human rights behaviour or as one author pertinently calls it, “window dressing” or “human rights half measures” are calculated not only towards appeasing the international community, but also towards maneuvering the dynamics of states in international action, for example to influence the swing states that activist states must rely on in multilateral action.<sup>15</sup>

International pressure on a State has its limitations, nevertheless, it accomplishes something. Governments necessarily have to keep up appearances. A case in point is when the student activist Wasantha Mudalige who had been kept in detention for

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<sup>14</sup> Interview with a victim in an emblematic case, 19th October 2021.

<sup>15</sup> ‘K. Cronin- Furman, Human Rights Half Measures: Avoiding Accountability in Post War Sri Lanka’, (2020) *World Politics*, 72(1), 121-163. <<https://discovery.ucl.ac.uk/id/eprint/10089226/1/WP%20Accepted%20Version.pdf>>

over 150 days under the Prevention of Terrorism Act (“PTA”) was released the day before the review of Sri Lanka under the Universal Periodic Review of 2023.<sup>16</sup>

Looking back, it is clear that the Rajapaksa Government had no political will to bring to justice the perpetrators of human rights violations. In fact, even during Gotabaya Rajapaksa’s tenure as President from 2019-2022 during which Mahinda Rajapaksa was his Prime Minister, he once again using the language of patriotism, assured that war heroes would be protected.<sup>17</sup> Thus, despite the establishment of the LLRC or a Presidential Commission of Inquiry, there does not seem to be sufficient justification to believe that the people expected the Government headed by Mahinda Rajapaksa to act to further accountability. In contrast, the expectations on the Yahapalana Government spurred on by its propaganda of a holistic approach to good governance was different. One could rightly say that the expectation on the Yahapalana Government was greater. However, as recounted in this chapter, both these Governments failed the people of this country by failing in their duty owed to the people as a whole. The end result is that disillusion is the bitter after taste the public is left with at the end of the tenure of each government.

There are several things that one can draw from the experience of these two Governments. One is that in democracies, individuals

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16 ‘Sri Lanka student leader Wasantha Mudalige released from terror case: report’, EconomyNext, 31st January 2023 <<https://economynext.com/sri-lanka-student-leader-wasantha-mudalige-released-from-terror-case-report-110919/>>

17 PM assures to protect war heroes, Daily FT, 19 May 2021 <<https://www.ft.lk/news/PM-assures-to-protect-war-heroes/56-718032>>

should fade into the background. Whether it was the political propaganda of a ‘Mahinda Chinthanaya’ or ‘Maithri Yugayak’, the narrative of a ‘hero-leader’ has been used over decades to manipulate the masses and win over people to support a certain political party or political figure.<sup>18</sup>

However, if there is one thing that one can learn from the mobilisation of citizens and the events of 2022, it is that the people have untapped power to bring about change in governance. They must use this power to bring about reform and put faith not in individuals, but in robust, democratic institutions created by law. Whether it is a strong and independent Constitutional Council nominating public officials or the higher judiciary or an Independent Prosecutor’s Office which would prove vital in conducting unbiased prosecutions by the State, democratic institutions and mechanisms would, more often than not, prove infallible and incorruptible where individuals fail.

Another factor to be considered, specifically when considering the issue of accountability is that there are different dynamics and tensions even among the proponents of accountability. Going beyond this, it is a fact that until the events of 2022, the people of the southern part of the country were not very receptive to the idea that there had been violations of human rights in the northern and eastern parts of the county during

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18 The ancient Greeks, often credited with founding democracy, understood the danger to a democracy from political egotism or the unchecked power of an individual or a ruling class. In ancient Athens, ostracism was a process by which the citizens could nominate any citizen, including a political leader, who posed a threat to democracy to be expelled from the city-state for 10 years. See, ‘Ostracism in Ancient Greece’, National Geographic <<https://education.nationalgeographic.org/resource/ostracism-ancient-greece> >

the conflict. It had been that they had either not realised the extent of abuses or else they had believed in some justification. This may be one of the reasons why the human rights agenda has never been one with popular support. Nevertheless, when one finds oneself on the side of the majority, it is always time to pause and reflect.<sup>19</sup>

When a human rights violation is committed, while the police investigation plays a crucial role, the victims ultimately look to the Judiciary for redress. In the ensuing years, the courtroom thus becomes the battlefield where the victims fight for justice amidst myriad challenges. In parallel to the half-hearted measures taken by successive governments with regard to Sri Lanka's human rights obligations, the pursuit of justice in the domestic courts system too has seen a lack of will to prosecute and manipulation of the court process. In many instances, prosecution of violations of human rights do not seem to be efforts taken in good faith at pursuing justice. This is manifested through patterns of interference and manipulation of the court process which will be examined in more detail in the next part.

### **Patterns of Interference and Manipulation of the Court Process**

*"I have had experience with the judicial system of Sri Lanka for almost a 12 year period during which time I have gone to different courts for more than 200 days. First of all, I would like to say that when I first started my struggle for justice, I knew that gaining justice would be difficult, but I*

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19 Mark Twain.

*had no idea how cruel the process would be. This is because of the role of politics in the State machinery for obtaining justice”.*<sup>20</sup>

A common characteristic manifested in several emblematic cases that is too common to be a coincidence is the manner in which certain court processes have been manipulated or interfered with in instances where State machinery or persons of influence have been implicated. While such abuse, in some instances, could not be characterised as a clear flouting of the law, it is undoubtedly walking where the lines blur. These objectionable practices create an environment potentially conducive to outright violations of the law in many instances. This is especially significant in light of findings by several local and international fact-finding bodies highlighting the serious lack of independence of investigating and prosecuting officers.

This part considers the following ways in which the legitimate processes of the court are abused. In the first instance, the transfer of cases, for example, from Muttur or Trincomalee Magistrate’s Court to the Anuradhapura Magistrate’s Court where the judge and the court officials would be Sinhalese, and the population is predominantly Sinhalese which has led to real and/or perceived discrimination and intimidation of victims and witnesses. Secondly, the conduct of problematic jury trials with a Sinhalese only jury where both the victims and witnesses happen to be of Tamil ethnicity, has also led to potential prejudice to the conduct of justice. Thirdly, the process is abused to delay the investigation and prosecution which in

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<sup>20</sup> Interview with a victim in an emblematic case, 19th October 2021.

some instances has given the opportunity for the destruction of evidence and victim and witness intimidation.

These factors have given rise to situations where prejudicial conditions are created for victims and witnesses, resulting in intimidation of victims and witnesses and evidence tampering, where the processes of court are ultimately used to defeat the purposes of justice. A thorough examination of the manner in which justice is impeded in this manner is necessary to establish a pattern. This part of the article will attempt to establish a pattern through an analysis of the investigative and prosecutorial processes in several emblematic cases such as the murder of the ACF Aid Workers, the Kumarapuram massacre, the Mylanthanai massacre, and the case of the 'Trinco Five'.

### **ACF Aid Workers massacre**

The ACF Aid workers case concerned the execution style murder of seventeen aid workers from Action Internationale Contre la Faim (ACF) who were killed in and around their office in Muttur on or around 5 August 2006.<sup>21</sup>

To begin with, there was delay by the investigating authorities in conducting a proper investigation and a marked bias. Official police reports indicated that the LTTE was responsible for the killings even before a proper investigation although a number of credible sources suggested otherwise.<sup>22</sup> There is ample

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21 'The Muttur Massacre: A Struggle for Justice', ACF (June 2008)

22 Muttur: The Truth about the Assassination of 17 Aid Workers in Sri Lanka', ACF, December 2013 <[https://www.accioncontraelhambre.org/sites/default/files/documents/la\\_verdad\\_muttur.pdf](https://www.accioncontraelhambre.org/sites/default/files/documents/la_verdad_muttur.pdf)>

ground to suggest that lack of proper evidence and the absence of a proper investigation at the initial stage was a roadblock in prosecution of the crime.

*“The scene of the crime was not guarded although it was quite near the police station- it was about 500 metres from the police station. There is reason to believe that the police had known everything that was going to happen. Until a team of higher officials came from mainland Trincomalee (the shooting happened in Muttur which is almost an island), there was no attempt to cordon off the place to protect the integrity of the evidence. There is strong belief that what remained of the evidence had been tampered with. There was not much evidence produced in court. That is why the case could not get off the ground.”*

The integrity of the evidence was compromised. Only the witnesses and family members of ACF staff and the local ACF staff remained, who were subjected to high psychological pressure, threats and physical violence in the ensuing days.<sup>23</sup> The ACF recounts in its official reports of a number of testimonies by witnesses who had been approached by the police, the army and unidentified persons, harassed and compelled not to testify against the Government forces.<sup>24</sup>

The first inquest began before the Magistrate of Muttur.<sup>25</sup> At the hearing held on 5 September 2006, the Magistrate was supposed to pronounce the verdict on the cause of death. Instead, the Magistrate informed all parties that the case was

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23    ibid.

24    ibid pp. 15

25    ibid pp.12

to be transferred to the Anuradhapura Magistrate's Court where another judge had been appointed. The case was then transferred to the Anuradhapura Magistrate's Court (situated in the predominantly Sinhalese North Central Province).<sup>26</sup> Interestingly, the transfer was as a consequence of a telephone call by the Secretary, Ministry of Justice to the Magistrate of Muttur, ordering the transfer on instructions of the Judicial Service Commission (this was noted in a journal entry by the Magistrate).<sup>27</sup>

The question naturally arises; what the broader implications of such irregular means of transfer of cases are. Can the justice system be warped to accommodate the needs of the accused in blatant disregard to the needs of the victims who have already suffered? While the overt reason may be to accommodate the security of the accused, a likely motive is also to affect the outcome of the case.

It was also at this time, in 2006, that a Presidential Commission of Inquiry was appointed to Investigate and Inquire into Serious Violations of Human Rights which are alleged to have arisen in Sri Lanka since 1 August 2005 (the Udalagama Commission), the mandate of which included the ACF Aid workers case and the Trinco Five case. The Commission exonerated the Sri Lankan army and navy in the ACF killings, primarily on limited witness testimony that these forces were not in the vicinity at the time.<sup>28</sup>

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26 K. Pinto- Jayawardena, 'Post-War Justice in Sri Lanka: The Rule of Law, the Criminal Justice System and Commissions of Inquiry, International Commission of Jurists (2010) fn 504.

27 *ibid.*

28 Sri Lanka: Adopt International Inquiry for Aid Worker Killings, Human



The blame was placed on either the LTTE or the auxiliary police known as home guards. The full report which was presented to President Mahinda Rajapaksa remains unpublished.

According to the limited information available on the case at present, it was reported in June 2019 (almost nearing the end of the Yahapalana Government term) that the then Attorney General had ordered the police to speed up investigations into the ACF massacre, but as the lapse of over three years since then shows speedy justice is almost an oxymoron in Sri Lanka where emblematic cases are concerned.

### **Kumarapuram massacre**

On 11 February 1996, 24 civilians including women and children were murdered allegedly by the Sri Lankan security forces. Initially a military board of inquiry was formed which recommended the punishment of senior officers for their acts of culpable omission.<sup>29</sup>

Trial commenced in the High Court of Trincomalee. However, in October 2006, at the request of the accused, the case was transferred to the Anuradhapura High Court. This was done by the Court of Appeal citing the security of the accused. What was problematic about the transfer was that the Attorney General did not object to the order, and the counsel for victims

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Rights Watch <<https://www.hrw.org/news/2009/08/03/sri-lanka-adopt-international-inquiry-aid-worker-killings> >

29 K. Pinto- Jayawardena, 'Post-War Justice in Sri Lanka: The Rule of Law, the Criminal Justice System and Commissions of Inquiry, International Commission of Jurists (2010) pp.60

were not given an opportunity to object.<sup>30</sup> There is provision in the legislation for transfer of cases for various reasons.<sup>31</sup> However, this provision continues to be misused in a manner disadvantageous to the victims. This may be explained by the following statement.

*“The accused apparently wanted to avoid a Tamil judge in Trincomalee possibly directing the jury for a conviction.”<sup>32</sup>*

From the time the case was transferred to Anuradhapura in October 2006 to June 2016 for an almost 10-year period, the case did not proceed except for a single calling date on 5 October 2009.<sup>33</sup> From June to July 2016, the jury trial took place at the Anuradhapura High Court and significantly, out of a total of 120 witnesses who were sent notices, only 40 gave evidence during the trial.<sup>34</sup>

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30 ‘Impunity Reigns in Sri Lanka: The Kumarapuram Massacre and Acquittals’, PEARL, March 2017, pp.8. The case involved the massacre of 26 Tamil civilians and the injuring of 24 others by a group of eight to ten soldiers from the 58th Mile Post and Killiveddy camp who entered the small village of Kumarapuram in Trincomalee district on 11th February 1996.

31 Section 46 of the Judicature Act states that the Court of Appeal shall have the power to transfer cases pending before any court while section 47 of the Judicature Act empowers the AG to transfer an inquiry or a trial of a criminal offence from its original court to another court, whenever it appears to him that such measure would be expedient.

32 ‘Sri Lanka: President urged to retry acquitted suspects in Tamil massacre’, JDS, 30 July 2016 <<http://www.jdslanka.org/index.php/news-features/human-rights/621-sri-lanka-president-urged-to-retry-acquitted-suspects-in-tamil-massacre>>

33 ‘Impunity Reigns in Sri Lanka: The Kumarapuram Massacre and Acquittals’, PEARL, March 2017, pp.8.

34 *ibid* pp.8.

Further, in the Kumarapuram case, the accused parties opted to have a jury trial. In Sri Lanka, under section 11 of the Judicature Act No. 2 of 1978, an accused may elect a jury trial where at least one of the charges is for an offence under Schedule 2 of the Act. Schedule 2 includes the offences of murder, culpable homicide not amounting to murder, and rape.<sup>35</sup> Under the provisions of the Code of Criminal Procedure Act, the accused has the right to choose whether the language of the jury is Sinhala, Tamil or English.<sup>36</sup>

Thus, the accused may exercise their right of opting for a Sinhalese speaking jury which, taken in isolation, seems a fair and justifiable exercise of the rights of accused. However, the fact that the accused was not given a mere Sinhalese speaking jury but an ethnically Sinhalese jury when there was ample opportunity to include Sinhalese speaking individuals of other ethnicities discloses questionable motives and a disregard for any appearance of bias.

*“The jury system itself has to undergo some debate on its viability... If we consider an ordinary crime, a violent crime - the accused would not choose a jury and would instead choose a judge because the judge would not be influenced by the media portrayal or emotions. But here when the accused chooses a Sinhalese speaking jury, that person can exploit the emotions of a particular group of society because this group of people can be influenced by*

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35 Sections 296, 297, 300 and 364 of Penal Code are listed in Schedule 2 of the Judicature Act

36 Section 210, Code of Criminal Procedure Act (No. 15 of 1979)

*contemporary happenings. In ethnically inspired crimes, the accused would most often select a Sinhalese speaking jury.*<sup>37</sup>

On 27 July 2016, over 20 years later, the jury of the Anuradhapura High Court acquitted the six accused soldiers of all 606 charges against them. The judge's directions to the jury too may have been a contributory factor in the acquittals. It was significant that the judge in his address to the jury made no mention of the fact that, according to police testimony, all physical evidence had been destroyed in a fire at the Government Analyst's Office in Colombo in 2005.<sup>38</sup> No mention was made of the destruction of all documentary evidence that had, however, been submitted before the Muthur Magistrate's Court, in the tsunami in 2004.<sup>39</sup> The failure of the judge to draw the attention of the jury to this crucial fact may have caused even the jurors who were inclined to convict the accused to hesitate, for there is sufficient reason to believe that the final jury verdict is necessarily coloured by the judge's instructions to the jury.

Very soon after, the affected families of the Kumarapuram massacre handed over to the newly elected Yahapalana President Sirisena, a petition requesting a retrial before a Trial-at-Bar.<sup>40</sup> In

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37 Interview with an Attorney-at-Law appearing on behalf of an aggrieved party in an emblematic case, 12th January 2023.

38 Such physical evidence included the victims' blood-stained clothes and the weapons allegedly used by the perpetrators. See, 'Impunity Reigns in Sri Lanka: The Kumarapuram Massacre and Acquittals', PEARL, March 2017, pp. 13- 16 & 18

39 *ibid*

40 An Appeal to the President <[http://www.jdslanka.org/images/documents/28\\_07\\_2016\\_kumarapuram\\_appeal.pdf](http://www.jdslanka.org/images/documents/28_07_2016_kumarapuram_appeal.pdf)> ; 'Sri Lanka: President urged to retry acquitted suspects in Tamil massacre', JDS, 30 July 2016 <<http://www.jdslanka.org/index.php/news->

November 2016, it was reported that the Attorney General had filed an appeal against the verdict of the jury as it is against the law.<sup>41</sup>

### **Mylanthanai massacre**

Sometimes cases are also transferred by the Attorney General exercising his fiat under section 47 of the Judicature Act. This was the case in the Mylanthanai massacre which concerned a reprisal killing where Sinhalese soldiers attached to the Poonani army camp in Batticaloa murdered 35 unarmed Tamil civilians in the village of Mylanthanai on 9 August 1992.<sup>42</sup> It was supposedly in retaliation for the assassination of senior army officer Denzil Kobbekaduwa by the LTTE at Arali Point in Jaffna.<sup>43</sup>

The case was initially at the High Court of Batticaloa, near where the incident occurred and the witnesses lived, but was later transferred to the High Court in Polonnaruwa in the largely Sinhalese majority-dominated North-Central Province on the request of the accused.<sup>44</sup>

*“The issue here is that the victims are virtually the complainants but they are not notified. It is done behind the backs of the affected persons and*

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features/human-rights/621-sri-lanka-president-urged-to-retry-acquitted-suspects-in-tamil-massacre>

41 Civilian massacre in Kumarapuram: AG appeals against Jury’s HC verdict, Daily FT, 26 November 2016

<<https://www.ft.lk/News/civilian-massacre-in-kumarapuram-ag-appeals-against-jurys-hc-verdict/56-582500> >

42 K. Pinto- Jayawardena, ‘Post-War Justice in Sri Lanka: The Rule of Law, the Criminal Justice System and Commissions of Inquiry, International Commission of Jurists (2010) pp.61

43 *ibid.*

44 *ibid.*

*without their knowledge. The law does not require the AG to notice any other parties and this is to the benefit of the accused”<sup>45</sup>*

It is also unfortunate that while the security of the accused was given due consideration, the security concerns of victims and witnesses were not given equal consideration. While this was not the only factor contributing to an acquittal in this case, it is quite likely that it may have played a significant role.

*“Although there was no positive complaint about intimidation it was clearly overwhelming. For instance, the previous day, the Grama Sevaka would have gone and told them (the witnesses) that they were wanted by the police. Their mental state would have been fearful. Although they are not under arrest, they are brought in police buses. That is not necessary if the case had not been transferred and if the case had instead been heard in a court in the jurisdiction where it happened. Then there would have been no need for witnesses to be herded. They could have come on their own. They could have retained lawyers to watch for their interests.*

*The witnesses will have to stay for days. What type of shelter do they get? Jury trial will not adjourn like a trial before a judge. They have to wait for days for their turn and it’s like some sort of torture for them. Sometimes the witnesses are women with small children. You must also consider the fact that they are reliving the tragedy”<sup>46</sup>*

The accused in the Mylanthanai case also opted for a jury trial

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45 Interview with an attorney-at-law appearing on behalf of the aggrieved party in several emblematic cases, 12th January 2023.

46 Interview with an attorney- at- law appearing on behalf of an aggrieved party in an emblematic case, 12th January 2023.

and the accused soldiers were found not guilty. Following this the High Court Judge, S. Sriskandarajah requested the jury to reconsider the verdict in light of the compelling evidence. However, the jury found the accused soldiers not guilty again.<sup>47</sup> The Attorney General turned down the request of the victims' representatives to appeal citing various technical reasons.<sup>48</sup>

Apart from the problematic jury trial, the course of action taken by the Attorney General's Department was also disappointing. The Attorney General could have made an application for a Trial- at- Bar or objected to the all Sinhalese jury.<sup>49</sup> The failure on the part of the Attorney Generals' Department to do so, meant the victims were left feeling that their rights were not vindicated for them by the State.

The lack of independence of the Attorney General's Department is in one aspect, caused by the dual roles played by the Attorney General as the chief legal advisor to the government and the head public prosecutor. In 2016, the Special Rapporteur on the Independence of Judges and Lawyers, Monica Pinto, on her mission to Sri Lanka studied the role of the Attorney General's Department and expressed concern over the dual role enjoyed by the Attorney General.<sup>50</sup> She further expressed concern that

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47 K. Pinto- Jayawardena, 'Post-War Justice in Sri Lanka: The Rule of Law, the Criminal Justice System and Commissions of Inquiry, International Commission of Jurists (2010) pp.154

48 *ibid.*

49 'Impunity Reigns in Sri Lanka: The Kumarapuram Massacre and Acquittals', PEARL, March 2017, pp. 12.

50 'Rethinking the Attorney General's Department in Sri Lanka: Ideas for Reform, Centre for Policy Alternatives, 2020 <<https://www.cpalanka.org/wp-content/uploads/2020/11/AGs-Dept-Final.pdf>>

the Attorney General acting as representative of the State, creates the impression that the Attorney General represents the Government's interests foremost and not the public interests.<sup>51</sup> This sentiment is reflected in the following statement by a victim in an emblematic case.

*"...when the Habeas corpus action I had filed was being taken up, the Attorney General was the respondent on behalf of the State. It was like the Attorney General was my opponent."*<sup>52</sup>

This lack of independence is also reflected in other aspects where the Attorney General's Department has failed in its role as prosecutor of heinous crimes. A glaring example was when the Mylanthanai massacre case was on trial and there was no representation from the Attorney General's Department on behalf of the state.

*"No state counsel appeared for the prosecution at the non- summary trial in Polonnaruma. In very prominent cases the Attorney-General nominates a senior state counsel to conduct the non- summary proceedings. Generally the state counsel has an important role to play in leading the evidence. In this instance, the onus was on the lawyers appearing for the affected parties to lead the evidence. This was very difficult because our ability was limited by the fact that we have no authority over the police. We cannot ask the police to bring witnesses and documents as evidence but the state counsel could have done this"*<sup>53</sup>

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51    ibid

52    Interview with a victim in an emblematic case, 19th October 2021

53    Interview with the attorney- at- law appearing for the aggrieved party in an emblematic case, 12th January 2023.



### **The ‘Trinco Five’ case**

The ‘Trinco Five’ case concerned five students who were shot and killed in Trincomalee on 2 January 2006. The Special Rapporteur on Conflict Related Human Rights Violations appointed by the Human Rights Commission, in his report (Suntheralingam report) concluded that “it was highly unlikely that anyone other than the STF could have shot those who were at the Gandhi statue”.<sup>54</sup>

The report further dismisses as a false account the official statement issued by the security forces that the youth killed were LTTE insurgents carrying out a grenade attack. To support this view, the report refers to the result of the post-mortem examination which concluded that all those who died had died of gunshot injuries.<sup>55</sup> Notwithstanding such weighty evidence, thirteen years later the Magistrate’s Court acquitted all 13 defendants (this included 12 members of the police Special Task Force (STF) and a police officer) for lack of evidence.

This was not surprising, for in the months and years following the murder, a very systematic and thorough intimidation of victims and witnesses began with even the last willing witness, Dr. Manoharan (father of one of the murdered students) leaving the country. This was in striking contrast to his evidence on 10

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54 Report of the Special Rapporteur on Conflict Related Human Rights Violations appointed by the Human Rights Commission (Suntheralingam report) pp 9.

55 The JMO stated in his report that three persons had gunshot wounds on their heads while two had been shot on their chest and abdomen. *ibid*, pp 9.

January 2006, immediately after the incident on the first day of the trial at the Magistrate's Court.

*“As far as I am concerned, I say that my son died of gunshot injuries. Where the others are concerned, I would say that they very likely died of similar causes. I would also say that it is the Government forces who are responsible for the deaths of all. A bomb went off at the scene of the incident at 7.35 PM. The gun shots I heard and the flashes I saw with my own eyes were at 8.15 PM. All this time the area was ringed and controlled by the security forces. Therefore no one else could have done the deed.”<sup>56</sup>*

Subashini Chitravel, Acting Magistrate, testified on the same day: *“I say that my sister's son was cruelly killed. He had no enemies. He was killed by those who had guns. The security of the region has been entrusted to the Government security forces. They must give an answer. In this connection a fair verdict must be given, and those guilty must be punished.”<sup>57</sup>*

At the UNHRC session of March 2013, Dr. Manoharan referred to the failure of the LLRC proceedings and the 2006 Presidential Commission of Inquiry.<sup>58</sup> This was important in giving new life to the dormant proceedings.

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56 University Teachers for Human Rights (Jaffna) UTHR(J), Special Report No. 24, “The Five Students Case in Trincomalee” <<https://uthr.org/SpecialReports/spreport24.htm>>

57 *ibid*

58 Today, 7 long years have passed since my son's murder, without any justice or decision from the Sri Lankan courts! – Dr. Manoharan @UNHRC, Sri Lanka Brief, 15th March 2013 <<https://srilankabrief.org/today-7-long-years-have-passed-since-my-sons-murder-without-any-justice-or-decision-from-the-sri-lankan-courts-dr-manoharan-unhrc/>>

In 2015, the Yahapalana Government took measures to finally pass into law a draft bill which had been many years in the making on Assistance and Protection of Victims of Crime and Witnesses. While this was a positive measure towards addressing concerns around intimidation and threats to victims and witnesses, the law fell short of the mark in several aspects, and not the least of them was the involvement of the Police Department and law enforcement officers in the protection schemes.<sup>59</sup> Or as one expert succinctly put it:

*‘The victim is essentially seeking security from the same department that has deprived him of his rights or violated his rights. The experience in our country is that these institutions very jealously (or should I say zealously) protect their own people. There are very few examples of authorities acting to curb violent acts by their own’<sup>60</sup>*

In the present case specifically, in 2017, Dr. Manoharan was informed that he could provide evidence in the case before a local court through Skype. This was enabled through an amendment to the Act brought about in the same year which provided that a witness outside Sri Lanka can provide evidence at a Sri Lankan diplomatic mission office.<sup>61</sup> Despite this, several witnesses including Dr. Manoharan refused to do so and as a representative from Amnesty International was quoted as

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59 See also, Rosalind Sipos, The Draft Bill for the Assistance and Protection of Victims of Crime and Witnesses: Critique and Recommendations, Centre for Policy Alternatives <[https://cpalanka.org/wp-content/uploads/2007/10/\\_and\\_Witness\\_Protection\\_Bill.pdf](https://cpalanka.org/wp-content/uploads/2007/10/_and_Witness_Protection_Bill.pdf)>

60 Interview with an attorney-at-law appearing on behalf of an aggrieved party in an emblematic case, 12th January 2023.

61 ‘Dead end in Trinco 5 case?’ Verite Research <<https://www.veriteresearch.org/2019/07/15/trinco5-dead-end/>>

saying “the safety of a diplomatic mission is not sufficient for a victim to give evidence, especially in this case where levels of intimidation were so high”.<sup>62</sup>

The prolonged delay even after the Yahapalana Government had come into power prompted US envoy Atul Keshap to tweet that “justice delayed is justice denied” to which the then Law and Order Minister Sagala Ratnayaka said the case was now progressing as new reforms have allowed the use of Skype evidence.<sup>63</sup>

Nevertheless, threats to life had ensured that these witnesses fell gradually silent or were scattered around the world.<sup>64</sup> The case dragged on in court to the point where all possible means of evidence had been exhausted. On 3 July 2019, thirteen years after the crime, all accused were acquitted, after the path of justice had been warped beyond recognition. Reflective of the fruitless journey towards justice and the insurmountable barriers facing victims Dr. Manoharan states: “In Sri Lanka, I can’t challenge my case, the lawyer who appealed my case got

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62 Gruesome killing of five Tamil students in Trinco 13 years ago, Daily mirror, 6 July 2019. <<https://www.dailymirror.lk/dbs-jeyaraj-column/Gruesome-killing-of-five-Tamil-students-in-Trinco-13-years-ago/192-170630>>

63 Case over murder of five youth in Trincomalee progressing due to Skype evidence: Sagala, Daily FT, 5th January 2018 <<https://www.ft.lk/news/Case-over-murder-of-five-youth-in-Trincomalee-progressing-due-to-Skype-evidence--Sagala/56-646538>>

64 Gruesome killing of five Tamil students in Trinco 13 years ago, Daily mirror, 6 July 2019. <<https://www.dailymirror.lk/dbs-jeyaraj-column/Gruesome-killing-of-five-Tamil-students-in-Trinco-13-years-ago/192-170630>>

threats to his life...I want an international investigation of my son's criminal murder".<sup>65</sup>

## Conclusion

In 2022, in Batticaloa, the eastern part of the island, peaceful protesters continued their Batticaloa Walk for Justice which had lasted for more than 108 days. Their walk was a manifestation of their protest over many fundamental causes - the right to truth and accountability for the families of the disappeared, against the PTA (Prevention of Terrorism Act), against militarisation, condemning communal attacks against Muslim communities, against forced cremations during the COVID-19 pandemic, opposing violence against women and girls, and land dispossession.<sup>66</sup> In reply to all those who ask what their protest is about, they carry a cloth, on which is written in Tamil, 'why do we still walk for justice?'

In many ways, that is the fundamental question this article has been trying to answer, albeit in a small way. Human rights 'half measures' taken by successive governments and interference or manipulations with the court process have ensured that justice was never achieved. During the fourth cycle of the Universal Periodic Review in February 2023, the Minister of Foreign Affairs made reference to work underway to establish a truth-seeking mechanism.<sup>67</sup> It is as yet uncertain how this will turn

65 Dr. Manoharan in a recorded video as part of his international campaign for justice, also screened at 'Trinco Five' remembrance event, 3rd January 2023.

66 Sarala Emmanuel, 'The Batti Walk for Justice: A resistance for fundamental system change', The Morning  
<<https://www.themorning.lk/the-batti-walk-for-justice-a-resistance-for-fundamental-system-change/>>

67 Sri Lanka concludes its Review under the 4th Cycle of the Universal

out. The truth of the matter is that preserving the human rights record has become a necessary part of maintaining the international profile of a country. Nevertheless, even the strongest international pressure needs to be complemented by support from within the Sri Lankan population. The year 2022 saw an almost unprecedented urge by the general population to hold their government accountable for mismanagement and corruption. In such a context, what the future holds is unclear, but it may be that similar popular pressure in relation to issues of human rights could potentially tip the scales in favour of greater accountability.

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(UPR), News.lk, 2nd February 2023 <<https://www.news.lk/news/political-current-affairs/item/35008-sri-lanka-concludes-its-review-under-the-4th-cycle-of-the-universal-upr>>



# **Dystrophic justice? A Comparative Analysis of the Legal Proceedings Related to the Bind- unuwewa and Mirusuvil Massacres**

**-Kushmila Ranasinghe**

## **Introduction**

The Bindunuwewa massacre and the Mirusuvil massacre occurred within months of each other, under the same political regime and within the context of an ongoing civil war. Both massacres involved perpetrators from the ethnic majority, including members of the security forces, targeting members of the Tamil minority.

However, the similarities between the two incidents seem to end there. The trajectory of the legal proceedings showed marked differences. While the proceedings related to the Mirusuvil massacre were subjected to delays and case transfers, the comparatively swift convictions secured in relation to the Bindunuwewa massacre in 2003 were eventually overturned in 2005, culminating in the acquittal of the accused by the Supreme Court. Proceedings related to the Mirusuvil massacre continued for nearly fifteen years, resulting in the conviction of Staff Sergeant Sunil Ratnayake by the Colombo High Court which was later affirmed by the Supreme Court.

Nevertheless, in March 2020, President Gotabaya Rajapaksa pardoned Ratnayake. Justice remains elusive for victims of both massacres, despite these being among the select few emblematic cases where criminal convictions were rendered against members of the military and the police for abuses committed against Tamil citizens during the war. Legal proceedings related



to these massacres show that even in the rare instances where wartime atrocities are prosecuted, the ecosystem of legal and investigative institutions has continually failed to meaningfully support initiatives for accountability and justice for victims. Ultimately, both cases have become similar yet again in that they are emblematic of a pervasive climate of impunity.

The discussion in this chapter starts by providing an overview of the massacres and inquiring into the reasons for the divergence in the trajectories and conclusions of the legal proceedings. Firstly, the chapter aims to explore procedural issues related to delays, transfer of cases, and reprisals that resulted in the differences in their trajectories. Secondly, the chapter examines the respective High Court and Supreme Court judgements to identify reasons for the differences in outcomes of these cases, focusing on issues related to charges, evidence, and application of command responsibility and the justifications for acquittal and pardon of perpetrators. Finally, the chapter briefly explores the effects of independent investigations, political involvement, and the role of media in connection to these cases. The chapter concludes by highlighting the implications for accountability and transitional justice.

## **Overview**

### **Bindunuwewa massacre**

On 25th October 2000, twenty-eight Tamil inmates were murdered, and fourteen others were injured in an incident where a mob stormed the Bindunuwewa Rehabilitation Centre located in Badulla, Sri Lanka. The victims included minors. The mob primarily consisted of Sinhalese residents in the villages close to the Rehabilitation Centre. Several police officers stationed within and near the Centre were also implicated in the violence that

followed.<sup>68</sup> The incident precipitated several days of violence between the Tamils and the Sinhalese in the surrounding area.<sup>69</sup>

### **Mirusuvil massacre**

Nine internally displaced civilians from Mirusuvil visited their houses on 19th December 2000. There were minors in this group, including teenagers and a five-year-old child.<sup>70</sup> On the return journey to their temporary residence, they were stopped by two military personnel.<sup>71</sup> Thereafter, several soldiers blindfolded and assaulted the group. One youth was able to escape, but the other eight were murdered, and their bodies were later found buried nearby in a mass grave.<sup>72</sup>

### **Differences in Trajectory**

Delays and other procedural issues, while not technically unlawful, may be intentionally used or would have the unintentional effect of contributing to impunity in the long run, by prolonging legal

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68 Dr. Alan Keenan, 'Bindunuwewa: Justice Undone?' in Sri Lanka State of Human Rights 2004, Law and Society Trust (LST) 185 – 242, 185

69 Police said that the curfew was imposed from 8.30 p.m. until 4.00 p.m. as a precaution. See 'President directs Bindunuwewa investigations' The Sunday Times 29th October 2000 <https://www.sundaytimes.lk/001029/frontm.html>

70 The group consisted of Ponnadurai Maheshwaran, Raviwarman, Thaivakulasingham, Nadesu Jayachandran, Wilvarasa and his two sons, namely Prasad (5 years old) and Pradeepan Jayachandran (13 years old), Gnanachandran, and his son Shanthan (15 years old). See 'Revisiting the Mirusuvil massacre' Tamil Guardian 21st December 2021 <https://www.tamilguardian.com/content/revisiting-mirusuvil-massacre>

71 The Sri Lankan military occupied the area, including the Special Operations Unit of the 6th Gajaba Regiment and the L7777ong Range Reconnaissance Patrol (LRRP). See 'Revisiting the Mirusuvil massacre' Tamil Guardian 21st December 2021 <https://www.tamilguardian.com/content/revisiting-mirusuvil-massacre>

72 'Fundamental Rights Applications challenging the decision to pardon Sunil Ratnayake' Centre for Policy Alternatives 22nd April 2020 <https://www.cpalanka.org/fundamental-rights-applications-challenging-the-decision-to-pardon-sunil-ratnayake/>

proceedings and contributing to the difficulties faced by victims and witnesses. The following section examines how delays, case transfers, and reprisals influenced the trajectories of both cases.

## **Delays**

The expedient nature of the legal proceedings related to the Bindunuwewa massacre makes it an outlier among similar emblematic cases. While the indictments of forty-one suspects on 25th March 2002 and the beginning of the trial in July 2002 took nearly two years, the case was concluded relatively swiftly, with the judgement of the Supreme Court acquitting the accused being issued on 21st May 2005,<sup>73</sup> three years after the indictments.

Proceedings related to the Mirusuvil massacre stand in stark contrast to that of the Bindunuwewa massacre. The case was taken up at the Chavakachcheri Magistrate's Court in December 2000, and in the Anuradhapura Magistrate's Court in July and November 2002, after a case transfer. Later, the Chief Justice appointed a Trial-at-Bar at the Colombo High Court, and the proceedings commenced on 27th November 2002. Indictments were filed against five of the accused nearly two years after the massacre.<sup>74</sup>

Moreover, the accused filed an appeal with the Supreme Court on 23rd June 2003 contesting an order, and the Trial-at-Bar inquiry was suspended till the Supreme Court delivered its determination on the appeal.<sup>75</sup>

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73 'The Bindunuwewa Massacre in Sri Lanka: A Cry for Justice' Asian Centre for Human Rights 25th October 2005, page vi

74 'Army Sergeant found guilty and sentenced in the Mirusuvil massacre case' Centre for Human Rights and Development <https://srilankachrd.org/la-mirusuvil.php>

75 'Confessions in Mirusuvil massacre case valid - Supreme

There were many other occasions of delays due to changes in the bench. Two judges of the Trial-at-Bar bench were removed and a new bench, which included Justices Sarath Ambepitiya, Upali Abeyratne and Sisira de Abrew, was appointed, and the trial resumed on 4th November 2004. However, Justice Sarath Ambepitiya was assassinated on 19th November 2004. The case was fixed for 16th December 2004,<sup>76</sup> but since a new judge had not been appointed by that time, it was postponed to 19th January 2005. The trial was also experiencing delays due to judges being promoted.<sup>77</sup> Additionally, another judge was removed from the judiciary on disciplinary grounds and the bench had to be reconstituted.<sup>78</sup> While it is clear that these changes were not deliberately done to prolong the proceedings,<sup>79</sup> they nevertheless had the effect of contributing to further delays.

After more than two years of continued inaction, in March 2005, Chief Justice Sarath N. Silva appointed a three-judge bench to re-initiate the proceedings and the newly constituted bench<sup>80</sup> was set to begin hearings in May 2005. Overall, legal proceedings related to the High Court Trial-at-Bar continued over a span of nearly thirteen years.

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Court' TamilNet 19th March 2004 <https://www.tamilnet.com/art.html?catid=13&artid=11515>

76 Sandasen Marasinghe, 'Mirusuvil massacre case before Trial-at-Bar' Daily News 1st December 2004 <http://archives.dailynews.lk/2004/12/01/new29.html>

77 'New panel to probe Mirusuvil massacre' BBC 6th March 2005 [https://www.bbc.com/sinhala/news/story/2005/03/printable/050306\\_mirusuvil](https://www.bbc.com/sinhala/news/story/2005/03/printable/050306_mirusuvil)

78 Kishali Pinto-Jayawardena, Post-war Justice in Sri Lanka: Rule of Law, The Criminal Justice System and Commissions of Inquiry, International Commission of Jurists (ICJ), January 2010, page 62

79 Disclosed in an interview conducted with an Attorney-at-Law involved in the legal proceedings

80 Consisting of Justices Upali Aberathne, Deepali Wijesundara and Sunil Rajapakse

It is pertinent to note that a 'Trial-at-Bar'<sup>81</sup> is usually a swift process compared to a regular High Court trial, and the fact that the proceedings of the Mirusuvil case took over a decade to conclude is, therefore, emblematic of delays that often occur in relation to the prosecution of wartime atrocities.<sup>82</sup>

It is also pertinent to discuss the implications of delays which prolong proceedings. Firstly, as Keenan observed, the witnesses were obvious targets of intimidation in giving testimony before the Trial-at-Bar (as well as the Commission of Inquiry), and suspects and witnesses had a considerable amount of time to arrange their stories<sup>83</sup> as a result of these delays. Secondly, delays and inconclusive proceedings also exacerbate the trauma of the survivors of atrocities, who may have to recount and relive their traumatic experiences in a court of law for the duration of a prolonged trial (amidst threats and reprisals), hindering their ability to obtain justice, find closure, and heal.<sup>84</sup>

### **Case Transfers**

In 2001, the Mirusuvil case was transferred to the Anuradhapura Magistrate's Court from the Chavakachcheri Magistrate's Court at the request of suspects, who feared it would be a threat to their lives to continue proceedings in Chavakachcheri.<sup>85</sup> This

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81 As per Sections 450 and 451 of the Code of Criminal Procedure as amended by Act No.21 of 1988

82 Niran Anketell, 'The Mirusuvil Case: Why Searching Reforms is Urgent and Necessary' Groundviews 2nd July 2015 <https://groundviews.org/2015/07/02/the-mirusuvil-case-why-searching-reform-is-urgent-and-necessary/>

83 Keenan (n 2) 189

84 L Ellison and VE Munro, 'Taking Trauma Seriously: Critical Reflections on the Criminal Justice Process' (2017) 21 (3) International Journal of Evidence and Proof, pp. 183-208 [https://eprints.whiterose.ac.uk/100101/3/Taking%20Trauma%20Seriously%20manuscript%20\(final\).pdf](https://eprints.whiterose.ac.uk/100101/3/Taking%20Trauma%20Seriously%20manuscript%20(final).pdf)

85 'Army Sergeant found guilty and sentenced in the Mirusuvil massacre case' Centre for Human Rights and Development <https://srilankachrd.org/>

meant that the proceedings resumed far from the site of the massacre and key civilian witnesses. The High Court Trial-at-Bar proceedings took place in the Colombo High Court, and victims and witnesses had to travel between Colombo and Jaffna during and after the civil war.<sup>86</sup> Conversely, the Bindunuwewa case proved to be an exemption to the trend yet again, as no case transfers occurred during its relatively short proceedings.

### **Fear of Reprisals**

During the Trial-at-Bar proceedings concerning the Bindunuwewa massacre, the prosecution applied to withdraw charges against twenty-three (more than half) of the accused, due to the failure of four witnesses to testify against their neighbours (based on statements they had made earlier to the Criminal Investigation Department (CID)).<sup>87</sup> Keenan stated that according to reliable sources, these witnesses (and by some accounts, other witnesses) had been threatened to discourage them from testifying during the trial. The four witnesses were thereafter charged with perjury and were sentenced to two years of rigorous imprisonment.<sup>88</sup>

While a case transfer was allowed due to the fear of threats to the suspects' lives in the Magisterial proceedings related to the Mirusuvil massacre, in January 2003 during the High Court Trial-at-Bar, a warrant was issued on four witnesses who had

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la-mirusuvil.php

86 Similar trends related to transfer can be noted in other emblematic cases, where progress was slowed due to defendants' requests to move cases out of the North and East for security reasons. For example, in the case related to the 1992 Mylanthanai massacre of thirty-five Tamil civilians, the proceedings continued to move slowly following its transfer to Colombo. See 'World Report 2002: Events of 2001' Human Rights Watch <https://books.google.lk/books?id=YVAZQxB2HacC&printsec=frontcover#v=onepage&q&f=false>

87 Keenan (n 2) 219

88 *ibid*

not come for the hearings due to fear of travelling to Colombo from Jaffna. The witnesses were brought to Colombo and kept in safe custody thereafter on the intervention of a non-governmental organisation.<sup>89</sup>

Intimidation<sup>90</sup> of victims and their families persisted long after the proceedings were concluded. For instance, in January 2020, amidst reports of the (then) President Gotabaya Rajapaksa intending to pardon Sunil Ratnayake, an unknown group of men in a white van reportedly attempted to intimidate relatives of the Mirusuvil massacre victims.<sup>91</sup>

### **Differences in Outcome**

The legal proceedings of both massacres resulted in strikingly different outcomes. What follows is an overview of substantive matters as discussed during the legal proceedings which may have contributed to these differences, including the ways in which charges were construed, evidence was considered, legal principles were applied, and the outcomes were justified by Judicial and Executive authorities.

### **Charges**

In March 2002, thirty-one local residents and ten police officers were charged with eighty-three counts<sup>92</sup> which included

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89 Pinto-Jayawardena (n 12) 142

90 Moreover, in early 2003, during the Trial-at-Bar proceedings, defendants complained that the presence of Army officers in uniform within the court premises may lead to intimidation. On 11th February 2003, the court noted that those who obtained bail had entered the premises in uniform on that day and ordered that such officers should enter in their private capacities in non-official (civilian) clothing from that day onwards. See case journals related to HC 1092/02

91 'Men in white van intimidate relatives of Mirusuvil massacre victims' Tamil Guardian 21st January 2020 <https://www.tamilguardian.com/content/men-white-van-intimidate-relatives-mirusuvil-massacre-victims>

92 Keenan (n 2) 217

unlawful assembly with the common object of causing hurt to the detainees,<sup>93</sup> murder in the prosecution of the common object of the unlawful assembly,<sup>94</sup> attempted murder in the prosecution of the common object of the unlawful assembly,<sup>95</sup> murder “on the basis of the common intention shared among the doers of the acts of offence”,<sup>96</sup> and attempted murder on the basis of common intention.<sup>97</sup>

As Keenan noted, charges that reflected the dereliction of duty of the police (which was observed in the independent investigations related to the massacre) were markedly absent.<sup>98</sup> It was also unclear whether the charges adequately countenanced the existence of pre-planning prior to the events of the attack. The narratives propagated about the spontaneity of the massacre have been disputed. For instance, the Human Rights Commission of Sri Lanka (HRCSL) investigation clearly noted that “all the information we have been able to gather so far does not suggest that what occurred on the 25th was an unpremeditated eruption of mob violence caused by the provocation of the inmates. It is more consistent with a premeditated and planned attack.”<sup>99</sup> There was compelling evidence pointing to premeditation that did not receive serious consideration during the legal proceedings, chief of which included posters with inflammatory messages that were put up prior to the attack, and vehicles that came to the camp on the morning of the massacre.<sup>100</sup> While a

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93 Section 140 of the Penal Code

94 Sections 296 and 146 of the Penal Code

95 Sections 300 and 146 of the Penal Code

96 Sections 296 and 32 of the Penal Code

97 Sections 300 and 32 of the Penal Code

98 Asian Centre for Human Rights (n 8) 12

99 ‘The Curse of Impunity, Part I: Bindunuwewa, the Thin End of the Wedge of Impunity’ University Teachers for Human Rights (Jaffna) (UTHR(J)) 12th June 2005 <https://uthr.org/SpecialReports/spreport19ptI.htm>

100 Keenan (n 2) 213



poster obtained from the scene was reportedly handed over to the President by a journalist, no attempts were made to follow up on the posters or to trace the owners of the aforementioned vehicles.<sup>101</sup>

Instead, the framing of the massacre as a spontaneous event persisted and was reflected in the charges filed against the perpetrators. The written submissions of the prosecution framed the attack as a relatively spontaneous occurrence.<sup>102</sup> Moreover, the Presidential Commission of Inquiry (PCoI) report also insisted on the spontaneity of the massacre borne out of rage with the police failing to control the ensuing violence.<sup>103</sup> The report stated that “this attack was not master-minded or planned by any external forces and that it was not a pre-planned one.”<sup>104</sup> Meanwhile, five members of the Sri Lankan Army were charged for their involvement in the Mirusuvil massacre.<sup>105</sup> The Attorney General indicted them on counts including, being a member of an unlawful assembly<sup>106</sup> with the common object of causing intimidation, committing murder,<sup>107</sup> causing hurt (to Maheshwaran),<sup>108</sup> murder with common intention,<sup>109</sup> and causing hurt with common intention.

The initial charges related to unlawful assembly and common intention were pertinent since five members of the army were accused in relation to the massacre. However, the sole convict

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101     ibid

102     At pages 43 and 50, as cited in Keenan (n 2) 216

103     Keenan (n 2) 216

104     UTHR(J) (n 33)

105     ‘New panel to probe Mirusuvil massacre’ BBC 6th March 2005 [https://www.bbc.com/sinhala/news/story/2005/03/printable/050306\\_mirusuvil](https://www.bbc.com/sinhala/news/story/2005/03/printable/050306_mirusuvil)

106     Section 140 of the Penal Code

107     Sections 296 and 146 of the Penal Code

108     Sections 314 and 146 of the Penal Code

109     Section 32 of the Penal Code

was found guilty on counts 11 to 19, including the common intention to cause murder.<sup>110</sup> As such, the charges related to common intention are problematic in retrospect since all the other accused were acquitted. In the Supreme Court judgement upholding the Trial-at-Bar verdict, the improbability of these offences being committed by a singular person was noted.

## **Evidence**

The proceedings of the Bindunuwewa massacre were riddled with various issues related to the destruction of evidence and allegations of giving false evidence. The intent to cover up the matter or misdirect the prosecutors was apparent in the way that the evidence was handled. As a result, there is considerable doubt about the independence of the investigation into the massacre.<sup>111</sup>

Reports emerged of the destruction and disappearance of evidence, including three bullets recovered from one victim which reportedly disappeared after the autopsy.<sup>112</sup> Other disappearances included weapons allegedly used in the attack, and bloodstained objects recovered from the site of the massacre.<sup>113</sup>

During the Supreme Court appeal, it was alleged that one of the witnesses had given false evidence to sustain a verdict against the 2nd accused-appellant.<sup>114</sup> Insufficient evidence was also one of the key reasons for the acquittal of several accused.

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110 Anketell (n 16)

111 Disclosed in an interview conducted with an Attorney-at-Law involved in the legal proceedings.

112 UTHR(J) (n 33)

113 *ibid*

114 *Samy and Others v. Attorney General (Bindunuwewa Murder Case) [2007] 2 SriLR 216, 217*

Additionally, the Presidential Commission of Inquiry also found contradictions and falsehoods in the evidence of Assistant Superintendent of Police (ASP) Dayaratne and Headquarters Inspector (HQI) Seneviratne during its inquiry,<sup>115</sup> which was not sufficiently scrutinised during the legal proceedings.

Evidence was a key point of contention during the proceedings of the Mirusuvil massacre for two main reasons. Firstly, the admissibility of the confession of Sunil Ratnayake to a military police officer was a contested issue. Secondly, the case of the prosecution hinged on the credibility of the evidence of Ponnuthurai Maheshwaran, who was the sole survivor of the massacre.<sup>116</sup> Likewise, the recourse of the defence was to discredit him and emphasise inconsistencies. The former was, therefore, a question of law, while the latter was a question of fact.

When the prosecution led the evidence of the military police officer who recorded the confession of Ratnayake, the defence objected, on the grounds of inadmissibility of a confession made to a police officer under Section 23 of the Evidence Ordinance. Initially, the Trail-at-Bar judges held that the confession made to a military police officer was admissible because a military police officer<sup>117</sup> was not a police officer within the meaning of Section 23. However, Ratnayake appealed to the Supreme Court.<sup>118</sup>

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115 UTHR(J) (n 33)

116 Rathnayake Mudiyanseilage Sunil Ratnayake v. Hon. Attorney General SC TAB 01/2016 S.C.M. 25.04.2019

117 In the Krishanthi Kumaraswamy case, it was held that a confession made to the military police amounted to a confession made to a police officer and was therefore inadmissible. See Somaratne Rajapakse others v. Hon. Attorney General [2010] 2 SriLR 113

118 'Confessions in Mirusuvil massacre case valid - Supreme Court' TamilNet 19th March 2004 <https://www.tamilnet.com/art.html?catid=13&artid=11515>

The Supreme Court directed the Trial-at-Bar to exclude the confession by Ratnayake to the military police officer.<sup>119</sup> During the inquiry of the appeal, Senior State Counsel gave an undertaking to the defence that the prosecution would not base their case on the confession. Defence counsel subsequently withdrew the appeal, and the Supreme Court dismissed the case.<sup>120</sup>

In relation to the credibility of the witness, the Supreme Court stated that “there [was] not even a hint that Maheswaran had any reason to implicate the Accused-Appellant [Ratnayake] or other accused falsely.”<sup>121</sup> The Supreme Court also stated that the inconsistencies pointed out by the President’s Counsel for the Accused-Appellant were insignificant and does not negate the credibility of the testimony of Maheswaran. His evidence was further corroborated by the accounts of the other witnesses.

### **Chain of Command**

The chain of command is relevant since both massacres occurred at the hands of or in the presence of members of the security forces. Command responsibility has not been incorporated into the domestic law in Sri Lanka, which makes it difficult to implicate senior military officers or political leaders in atrocities and human rights violations.<sup>122</sup>

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119 Pinto-Jayawardena (n 12) 142

120 ‘Confessions in Mirusuvil massacre case valid - Supreme Court’ TamilNet 19th March 2004 <https://www.tamilnet.com/art.html?catid=13&artid=11515>

121 Rathnayake Mudiyanseelage Sunil Ratnayake (n 50) 14

122 ‘Challenges to Accountability for Human Rights Violations in Sri Lanka: A Discussion Paper’

International Commission of Jurists (ICJ) March 2017 <https://www.icj.org/wp-content/uploads/2017/03/Sri-Lanka-FCO-Accountability-1-Advocacy-Analysis-brief-2017-ENG.pdf>

For more details on jurisprudence on the duty to obey the orders of a superior officer, see *Wijesuriya v. The State* (1973) Court of Criminal Appeals Nos. 34-35

The justice sector in Sri Lanka has also been accused of protecting the political and security elite accused of committing wartime and post-war atrocities, by only occasionally pressing charges against subordinates to avert blame.<sup>123</sup> On the rare occasions when members of security forces were charged, the accused subordinates protested by claiming to be scapegoats.<sup>124</sup> On the still rarer occasions where convictions were secured against members of the security forces, a number of them were overturned in the appeal stage, contributing further to the deficit of trust in the justice system.<sup>125</sup>

This trend was exemplified in the proceedings related to the Bindunuwewa massacre. Notably, at the conviction and sentencing, a convicted officer claimed that several senior officers who gave the orders pertaining to the incident have either left the area or had comfortably retired and evaded accountability for the massacre.<sup>126</sup>

Moreover, as Keenan observed, the prosecution turned the superior officers ASP Dayaratne and HQI Seneviratne into state witnesses to provide evidence against the accused subordinates.<sup>127</sup> The accused further insisted that they were merely following orders and were unable to control the crowd due to limited resources provided by the HQI and the ASP, including anti-riot equipment or personnel. Additionally, the

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123 UTHR(J) (n 33)

124 See ‘Gaps in the Krishanthi Kumarasamy Case: Disappearances & Accountability’ Special Report No. 12 University Teachers for Human Rights (Jaffna) 28th April 1999 <https://uthr.org/SpecialReports/spreport12.htm>

125 UTHR(J) (n 33)

126 මනෝපරීක්ෂක ඉණසේකර, “මරණ දන්ඩුවම ලබන්න අප කල වරද මොකක්ද?” ලංකාදීප 2nd July 2003

127 UTHR(J) (n 33)

findings of the PCoI report were also critical of the failures of the ASP and the HQI in taking necessary actions, while the accused Karunasena and Walpola maintained that the superior officers were present from the beginning, but their claims were disregarded.<sup>128</sup> Ultimately, ASP Dayaratne and HQI Seneviratne were not charged in relation to the massacre.<sup>129</sup>

Likewise, the proceedings of the Mirusuvil massacre are also among the very limited number of emblematic cases which were able to successfully prosecute a member of the armed forces. However, it is amply evident that Sunil Ratnayake is not the only member of the armed forces involved in the massacre. In fact, the Supreme Court judgement reflects this view and states that “it is highly improbable if not impossible for a single person to commit all these acts. Thus, it is reasonable to infer that these acts have been committed by more than one person.”<sup>130</sup>

The proceedings followed the familiar and troubling pattern noted in the Bindunuwewa case. While several suspects were initially identified, only a few lower-ranking soldiers were charged.<sup>131</sup> Ultimately, Staff Sergeant Ratnayake was the only soldier convicted in relation to the massacre despite clear indications of the involvement of more than one soldier.

Thus, both cases exemplify the fact that the lack of provisions in domestic criminal law for incorporating command responsibility is a particularly glaring deficit which fails to capture the role of those who order, facilitate, or collude in the commission of

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128 Keenan (n 2) 211

129 *ibid*

130 Rathnayake Mudiyansele Sunil Ratnayake (n 50) 21

131 Anketell (n 16)

wartime atrocities.<sup>132</sup>

### **The Basis for Acquittal and Pardon**

In 2005, the Supreme Court acquitted those who were convicted in connection with the Bindunuwewa massacre. After a detailed evaluation of the material, the Supreme Court acquitted the 1st – 4th accused due to reasons including insufficient evidence, and the lack of a prima facie case.<sup>133</sup>

On 26th March 2020, President Gotabaya Rajapaksa granted a Presidential pardon to former Staff Sergeant Sunil Ratnayake.<sup>134</sup> While the President has the sole discretion related to pardons, the President is subjected to the provisions of Article 34 (1) of the Constitution, which requires him/her to “request the trial judge for a report and forward that report to the Attorney General with instructions that the Attorney General’s advice is sent to the Minister of Justice along with the trial judge’s report.”

<sup>135</sup> Thereafter, the Minister of Justice forwards the report to the President with his/her recommendation.

There is no indication that these provisions were followed in pardoning Sunil Ratnayake. In fact, in April 2020, Transparency International Sri Lanka (TISL) called on the Presidential Secretariat to publicise relevant documents in relation to the pardon.<sup>136</sup> However, this request was not heeded. The

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132 *ibid*

133 The remaining accused was acquitted of all charges at the hearing of the appeal on the application of the Solicitor General. See Samy and Others (n 48) 220

134 ‘Pardoning Sunil – A response’ Groundviews 30th March 2020 <https://groundviews.org/2020/03/30/pardoning-sunil-a-response/>

135 Ambika Satkunanathan, ‘Justice in the Time of a Pandemic’ Groundviews 29th March 2020 <https://groundviews.org/2020/03/29/justice-in-the-time-of-a-pandemic/>

136 ‘TISL calls for public disclosure of documents over Presidential Pardon of convicted Army soldier’ Times Online 1st April 2020 <https://www.timesonline.lk/news/tisl-calls-for-public-disclosure-of-documents-over->

Presidential pardon was also challenged in April 2020 by several Fundamental Rights petitions in the Supreme Court.<sup>137</sup> The proceedings related to the Fundamental Rights petitions are ongoing.<sup>138</sup>

The sole conviction related to the Mirusuvil massacre came one and a half decades after the incident and was affirmed by the apex court of the country. In granting pardon to Sunil Ratnayake, the former President made a mockery of the justice system and the rule of law.

### **Other Factors**

It is difficult to determine with any degree of certainty the exact implications of factors extraneous to the legal proceedings. However, an analysis of these cases would be incomplete without an overview of such factors for the purpose of contextualisation. The influence of non-legal factors ranges from direct and overt (in the case of political involvement and independent inquiries) to more nebulous and undetermined (in the case of media and public perception).

### **Findings of the Independent Investigations**

The Bindunuwewa massacre was the subject of inquiries by two commissions. Following reports of the incident in

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[presidential-pardon-of-convicted-army-soldier/18-1117759](https://www.cpalanka.org/fundamental-rights-applications-challenging-the-decision-to-pardon-sunil-ratnayake/)

137 ‘Fundamental Rights Applications challenging the decision to pardon Sunil Ratnayake’ Centre for Policy Alternatives 22nd April 2020 <https://www.cpalanka.org/fundamental-rights-applications-challenging-the-decision-to-pardon-sunil-ratnayake/>

138 It is worth mentioning that while the aforementioned petitions are pending, May 2022 marked a historic ruling where the Supreme Court suspended the Presidential pardon of convict Duminda Silva. It is hoped that the Supreme Court will similarly intervene in the case of Sunil Ratnayake. See ‘Hirunika and the Presidential pardon of Duminda Silva’ DailyFT 8th June 2022 <https://www.ft.lk/columns/Hirunika-and-the-Presidential-pardon-of-Duminda-Silva/4-735854>



Bindunuwewa, the HRCSL visited the Bandarawela area on 27th October 2000, two days after the massacre.<sup>139</sup>

On 8th March 2001, just under five months after the massacre, a Presidential Commission of Inquiry<sup>140</sup> headed by Court of Appeal Justice P. H. K. Kulatilaka was also appointed by President Chandrika Bandaranaike Kumaratunga specifically to investigate the events that occurred in the camp. The Presidential Commission of Inquiry held public hearings for nearly five months, and the completed report was handed over to the President in early 2002, but it was not officially released to the public.<sup>141</sup>

No other wartime atrocity has had not one but two independent investigations, in addition to the CID investigations. In contrast, the Mirusuvil massacre was not the subject of an independent investigation by any commission despite both massacres being committed within months of each other. However, the locations of the atrocities may provide an explanation for this difference. The Bindunuwewa massacre was committed in the Uva province, well away from ground-level combat during the civil war, whereas Mirusuvil was within the war zone in the North. It can be assumed, therefore, that safety concerns played a part in the decision. It was in fact in 2011, nearly two years

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139 The HRCSL reportedly interviewed senior members of the police and the army stationed within and close to the area surrounding the Centre. See Annual Report 01. 01. 2000 – 31. 03. 2001, Human Rights Commission of Sri Lanka HRCSL

140 Justice P.H.K. Kulatilaka, 'Bindunuwewa revisited' Sunday Observer, 22nd February 2015 <http://archives.sundayobserver.lk/2015/02/22/spe02.asp>

141 Keenan (n 2) 186. However, the report was made public in Asia Centre for Human Rights, 'Sri Lanka: Miscarriage of Justice: Mass Acquittal in the Bindunuwewa Massacre Case' 2005

after the end of the civil war, that the High Court Trial-at-Bar judges visited the site of the Mirusuvil massacre.<sup>142</sup>

Nevertheless, the military police investigated<sup>143</sup> the Mirusuvil massacre from the beginning. As a result of limited independent inquiries, the opportunities for corroboration or contradictions of events were also limited.

Moreover, it is crucial to note that despite two independent investigations into the Bindunuwewa massacre, the impact of their findings was minimal. At the very outset, the HRCSL and Presidential Commission of Inquiry investigations had some notable contradictory views on the events and causes of the massacre which compounded matters.<sup>144</sup> Additionally, despite extensive investigations, ultimately no reference to the findings and recommendations of either Commission appeared to be made during High Court Trial-at-Bar or Supreme Court proceedings, although the results of the investigation by the HRCSL have contributed to advocacy.<sup>145</sup>

Therefore, the findings of the Commissions seem to have had no bearing on the overall outcomes of the legal proceedings. Moreover, the report of the Presidential Commission of Inquiry was not officially released to the public. The establishment of the Presidential Commission of Inquiry in particular is indicative

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142 'Army Sergeant found guilty and sentenced in the Mirusuvil massacre case' Centre for Human Rights and Development <https://srilankachrd.org/la-mirusuvil.php>

143 'Revisiting the Mirusuvil massacre' Tamil Guardian 21 December 2021 <https://www.tamilguardian.com/content/revisiting-mirusuvil-massacre>

144 Such as the spontaneity or the organised nature of the massacre, which was detailed above

145 Disclosed in an interview with an Attorney-at-Law involved in the legal proceedings

of a still prevalent trend where Commissions function as mere window-dressing exercises, instrumental in deflecting genuine engagement with accountability.<sup>146</sup>

### **Political Will and Political Involvement**

The political context is a crucial consideration for prosecutorial initiatives. Accusations of both the lack of political will and the presence of political vengeance can be levelled against political leadership depending on the absence or presence of prosecutions.<sup>147</sup> In Sri Lanka, the lack of political will for the prosecution of wartime and post-war atrocities has been a prevalent contributor to long-standing impunity.<sup>148</sup>

Both the Bindunuwewa and Mirusuvil massacres were committed during the political leadership of President Chandrika Bandaranaike Kumaratunga. President Kumaratunga was elected in 1994 with a strong mandate and had been raising issues related to past crimes during her campaign trail.<sup>149</sup> The early 2000s under her leadership were a time that bore witness to a number of similar prosecutions of wartime atrocities.<sup>150</sup>

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146 See 'A List of Commissions of Inquiry and Committees Appointed by the Government of Sri Lanka (2006–2012)' Centre for Policy Alternatives 12th March 2012 <https://www.cpalanka.org/a-list-of-commissions-of-inquiry-and-committees-appointed-by-the-government-of-sri-lanka-2006-2012/>

147 'Rule-of-Law Tools for Post-conflict States: Prosecution initiatives' Office of the United Nations High Commissioner for Human Rights (OHCHR) 2006 <https://www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf>

148 Moreover, the latest attempt to allege political victimisation and interfere with ongoing prosecutions manifested in Presidential and Special Presidential Commissions of Inquiry. See Bhavani Fonseka, Kushmila Ranasinghe and Charya Samarakoon, 'A Commentary on the PCoI and the Special PCoI on Political Victimization' Centre for Policy Alternatives 21st April 2021 <https://www.cpalanka.org/a-commentary-on-the-pcoi-and-the-special-pcoi-on-political-victimization/>

149 UTHR(J) (n 33)

150 Anketell (n 16)

However, in 2019, Moira Lynch noted<sup>151</sup> that the rise in prosecutions during the tenure of President Kumaratunga was a temporary occurrence that unsuccessfully concluded in either acquittals or resulted in prolonged delays.<sup>152</sup> Proceedings related to both the Bindunuwewa and Mirusuivil massacres were examples of such failures.<sup>153</sup>

From the very outset, the possibility of political involvement in the Bindunuwewa massacre was a consideration. Keenan explained that the “CID was given explicit instructions to investigate the possible involvement of any political groups or other forces in organising the attack.”<sup>154</sup> However, they were reportedly unable to find evidence of such involvement.<sup>155</sup> This is despite the presence of controversial slogans against the inmates of the camp that were written on the backs of election campaign posters.<sup>156</sup>

The analyses of Keenan and the University Teachers for Human Rights (Jaffna) UTHR(J) point to several other compelling threads of potential political links that remained unexplored. Firstly, Keenan questions the lack of interest in inquiring

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151 ‘Human Rights Prosecutions and Institutional Continuity in Sri Lanka’ in Human Rights Prosecutions in Democracies at War (ed) Moira Lynch (Palgrave Macmillan 2019) <https://books.google.lk/books?id=Cf5uDwAAQBAJ&printsec=frontcover#v=onepage&q&f=false>

152 Anketell (n 16)

153 Meanwhile, no credible investigations were launched into several other atrocities committed by the security forces during her tenure. “Before I could run bombs began falling’ - Remembering the Navaly church massacre’ Tamil Guardian 9th July 2021 <https://www.tamilguardian.com/content/i-could-run-bombs-began-falling-remembering-navaly-church-massacre>

154 Keenan (n 2) 216

155 ibid

156 ibid

about “the role of the local Sinhala Urumaya organiser”<sup>157</sup> who lived near the camp, or “reports about the Sinhala nationalist political leanings of some of the home guards posted to the rehabilitation centre.”<sup>158</sup>

Secondly, the analyses of Keenan and the UTHR(J) further question the role and involvement of the then-Chief Minister of the Uva Province (and his driver) and illustrate the fact that his possible foreknowledge about the attack or attempts at misdirection was not sufficiently investigated at the time.<sup>159</sup>

It has been a long-held belief among several Sinhala nationalist politicians that former Staff Sergeant Ratnayake convicted for his involvement in the Mirusuvil massacre was a ‘war hero’ who should be released.<sup>160</sup> This assertion is well illustrated in a statement made during the presidential campaign of Gotabaya Rajapaksa in 2019, promising to protect ‘war heroes’ at any cost.<sup>161</sup> The pardon of Sunil Ratnayake was rumoured in the months prior to his election into the presidency. Four months after the election, President Rajapaksa pardoned Sunil Ratnayake.<sup>162</sup>

As such, the presidential pardon was a political act that was performed with a view of appealing to sections of the Sinhala

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157    ibid

158    ibid

159    UTHR(J) (n 33)

160    ‘Sri Lankan MP calls for pardon of soldier convicted of massacring Tamils’ Tamil Guardian 13th August 2016 <https://www.tamilguardian.com/content/sri-lankan-mp-calls-pardon-soldier-convicted-massacring-tamils>

161    Amy Kazmin, ‘Sri Lanka: how Easter attacks shaped presidential election’ Financial Times 14th November 2018 <https://www.ft.com/content/1e16ef1a-048b-11ea-a984-fbbacad9e7dd>

162    Meera Srinivasan, ‘Controversial ex-Navy chief is Gotabaya’s pick as Governor’ The Hindu 9th December 2021 <https://www.thehindu.com/news/international/controversial-ex-navy-chief-is-gotabayas-pick-as-governor/article37917929.ece>

nationalist voter base who were against the prosecution of members of security forces.<sup>163</sup> It also exemplified that impunity for wartime atrocities of this nature is not a passive or circumstantial outcome, but a result of active and political choices. Ultimately, as noted in a landmark Indian judgment on pardons, “[T]he only reason why a pariah becomes a messiah appears to be the change in the ruling pattern.”<sup>164</sup>

### **Scapegoats and Heroes: Media Portrayal and Public Perception**

From the outset, there were attempts to conceal the events of the Bindunuwewa massacre<sup>165</sup> and divert blame. As a result, a variety of contradictory accounts were reported in the media, further obfuscating the truth.<sup>166</sup>

Reporting for Silumina, Poddala Jayantha and Gunasinghe Hettiarachchi noted that at the outset, the CID tended to blame the negligence of the police officers, while the police officers blamed the limited assistance of the army platoon.<sup>167</sup> The

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163 It is also important to note that the former President has been accused of committing war crimes. See Meenakshi Ganguly, ‘Sri Lanka’s former president must be investigated for war crimes’ Human Rights Watch 22nd July 2022 <https://www.hrw.org/news/2022/07/22/sri-lankas-former-president-must-be-investigated-war-crimes>

164 *Epuru Sudhakar and Anr. v. Government of Andhra Pradesh and Ors.* Writ Petition (crl.) 284-285 of 2005

165 Disclosed in an interview with an Attorney-at-Law involved in the legal proceedings

166 For example, in an initial recounting of the events, B.M. Premaratne, SSP stated to the media that the youth detainees had broken into the store of the Centre to arm themselves and that they provoked the villagers. See UTHR(J) (n 33)

167 Jayantha Senevirathne attached to the Bandarawela Police stated that while an army platoon arrived around 9.30 PM on the day of the massacre, they left the scene at around 11.30, and the police had counted on their assistance. See පලා ද්දල ජයන්ත සහ ගුණසිංහ හටවිආරච්චි, “රටේ නම බිඳ දමන බිත්දුනුවැව සාකච්ඡා” සිලුම්ප 30th October 2000

Government Spokesman Ariya Rubasinghe also claimed that the Liberation Tigers of Tamil Eelam (LTTE) was involved in the violence and that the LTTE surrenderee Anton James instigated the attack. President Kumaratunga said in her speech that there had been provocation on ‘both sides.’<sup>168</sup>

Keenan notes that the English and Sinhala language media gave sympathetic coverage to the two convicted officers and their families, including information about an initiative to raise money for the legal appeal and to support their families.<sup>169</sup>

Sections of the public who are against the prosecution of security forces for wartime atrocities were particularly sympathetic to the plight of Ratnayake,<sup>170</sup> and politicians who shared this view were also vocal in their advocacy for his pardon. A study of the online perceptions of the conviction of Sunil Ratnayake offered an overview of the various competing narratives which appeared in online and mainstream media, including “... that the courtroom drama was enacted for the benefit of the international community.”<sup>171</sup> Conversely, the pardon of Sunil Ratnayake was widely condemned by local and international<sup>172</sup>

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168 UTHR(J) (n 33)

169 Keenan (n 2) 188 See also පා ලිත ආර්යවංශ, ‘බිත්දිණුවැව සාකච්ඡා නඩුවෙන් මරණ දන්ඩුවම හිමි වූ ගැමියන් කීදෙනා ගේ පවුල් අන්ත අසරණ වලො ‘ ලංකා දීප 9th July 2003

170 Organisations of ex-military officers openly advocated for the release of Ratnayake. See ‘Mawbima Wenuwen Ranawiruwo requests President to pardon soldier’ Ada Derana 31st January 2017 <http://www.adaderana.lk/news/38886/mawbima-wenuwen-ranawiruwo-requests-president-to-pardon-soldier>

171 Roshini Wickremesinhe and Sanjana Hattotuwa, ‘Saving Sunil A study of dangerous speech around a Facebook page dedicated to Sgt. Sunil Rathnayake’ Centre for Policy Alternatives October 2015 <https://www.cpalanka.org/wp-content/uploads/2015/10/SS-Final-RW-SH-formatted.pdf>

172 Justice reversed for victims of the Mirusuvil massacre, Sri Lanka’ Amnesty International 26th March 2020 [https://www.amnesty.org/en/latest/news/2020/03/justice-reversed-for-victims-of-the-mirusuvil-massacre-from-](https://www.amnesty.org/en/latest/news/2020/03/justice-reversed-for-victims-of-the-mirusuvil-massacre-from-142)

human rights groups.<sup>173</sup>

### **Implications for Accountability and Transitional Justice**

At first glance, the cases concerning Bindunuwewa and Mirusuvil massacres appear to be outliers relative to numerous atrocities committed by State actors. Filing charges and securing convictions against members of the security forces are rare occurrences.

At this juncture, it is important to revisit the immediate aftermath of the conviction of former Staff Sergeant Ratnayake in 2015, where members of the prosecution, as well as the Army spokesman, upheld it as proof of the ability of the domestic institutions to carry out credible investigations and legal proceedings.<sup>174</sup> The OHCHR Investigation on Sri Lanka (OISL) report also noted that the High Court Trial-at-Bar judgement in 2015 “was a very rare case in which a member of the security forces was convicted for a grave human rights violation, and showed that it is possible for the courts to undertake such investigations.”<sup>175</sup> Similarly, as Keenan noted, some human rights activists and lawyers saw the High Court Trial-at-Bar verdict concerning the Bindunuwewa case as successfully serving the ends of justice.<sup>176</sup>

Nevertheless, over time both cases have become yet another visible symptom of the widespread and lasting climate

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173 The United States and Canada have also issued sanctions against Sunil Ratnayake. See D. B. S. Jeyaraj, ‘Canada’s targeted sanctioning of Gota and Mahinda’ Daily Mirror 14th January 2023

174 ‘Sri Lankan soldier sentenced to death for wartime murders’ Reuters 26th June 2015 <https://www.reuters.com/article/us-sri-lanka-crime-idUSKBN0P52HU20150625>

175 A/HRC/30/CRP.2 para 1224

176 Keenan (n 2) 187



of impunity that has been cast over accountability and transitional justice efforts. As put succinctly by Keenan “[I]f the Bindunuwewa case proves anything, it is that simply having a trial for trial’s sake is not only inadequate, but can actually be dangerous.”<sup>177</sup> If the Mirusuvil case proves anything, it is that even after legal proceedings spanning over a decade led to a successful conviction, justice is never a certainty within a political and legal system that refuses to meaningfully grapple with issues of accountability.

Substantive and institutional reforms have often been recommended as solutions for attaining justice and accountability. However, it is clear that justice sector reforms by themselves cannot ensure that procedural laws are in place and followed. Even more complicated still are questions of the lack of political will, the complicity of political leaders, and the prosecutorial discretion of the Attorney General, with no straightforward answers in sight. Barriers and impediments to justice have persisted and over time, the justice system and its surrounding ecosystem of investigative and prosecutorial institutions have become a dystrophic environment that fails at supporting initiatives for accountability and justice for atrocities committed during the civil war.

## **Conclusion**

That the victims of the Bindunuwewa massacre will not see justice within the domestic legal system seems to be a foregone conclusion, with no successful attempts in the recent past at reviving interest in the case. Meanwhile, the victims of the Mirusuvil massacre, who saw a semblance of hard-won justice, have been denied the same due to the arbitrary actions of a President. While domestic and international

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177    *ibid* 237

human rights defenders have continuously pressured the Sri Lankan Government to abide by its accountability obligations, the backlog of cases is vast and justice for wartime atrocities remains politically unpopular, leading to inaction or delayed action. Bindunuwewa and Mirusuvil massacres are therefore symbolic of pervasive and entrenched impunity and the urgent need for substantive legal and institutional reform (and their effective implementation) within a system of governance with a long-standing distaste for reckoning with the past.



## **Interview with Mr. K.S. Ratnavale**

This is the transcript of an interview with Mr. K.S. Ratnavale, Attorney-at-Law, who appeared for the affected parties or was otherwise involved in a number of emblematic cases and was interviewed by the Centre for Policy Alternatives (CPA) on the basis of his work in this regard. The interview was conducted by Bhagya Samarakoon on 12th January 2023. CPA is grateful to Mr. Ratnavale for sharing his experience and important insights with us.

### **ACF Aid workers massacre**

On 4th August 2006, around 7 am, Action Contre la Faim (Action Against Hunger) lost radio contact with its mission in Muttur. The staff of 17 humanitarian workers (16 Tamils and 1 Muslim) were later found dead in the organisation's premises. They had been lined up and summarily executed. It remains one of the most atrocious war crimes committed against humanitarian workers.<sup>1</sup>

**The case was initially in the Magistrate's Court of Muttur and was transferred to the Magistrate's Court of Anuradhapura in the preliminary stages. Thereafter it was transferred to the Magistrate's Court of Trincomalee. Would you say that the procedure of transferring cases from one court to another is misused in some instances?**

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1 Muttur: The Truth about the Assassination of 17 Aid Workers in Sri Lanka', ACF, December 2013 <[https://www.accioncontraelhambre.org/sites/default/files/documents/la\\_verdad\\_muttur.pdf](https://www.accioncontraelhambre.org/sites/default/files/documents/la_verdad_muttur.pdf)>

Yes, certainly. There was no cause for the case to be transferred. This did not serve any purpose at all. This impeded the court process. Witnesses were all from Muttur. This was a clear attempt on the part of the authorities to deny witnesses an independent and safe atmosphere to testify.

However, the prosecution had arrested several security personnel and requested the families of the victims to testify in court. The families were not prepared to do that partly due to security concerns but mainly their concern was that the preliminary investigation was not conducted properly and those who were actually responsible for the massacre may not be among those who were arrested. Therefore, they were not prepared to be part of a sham trial.

As no witness turned up during the non-summary proceedings in the Magistrate's Court of Trincomalee, the court had no option other than to terminate the proceedings and discharge the accused.

**What would you say are some concerns associated with 'the climate of insecurity' which inhibited witnesses from coming forward to give evidence?**

In this case, the investigation was not properly conducted by the police. Valuable evidence was made to disappear. Although a presidential commission of inquiry was appointed to investigate several cases including this, there was no willingness on the part of the Police Department to conduct an impartial investigation

or to apprehend the suspects. The International Independent Group of Eminent Persons (IIGEP) has issued a damning report on the role played by the Attorney General's Department and more particularly the state counsel who was appointed to lead the evidence of witnesses. The IIGEP termed this as a conflict of interest on the part of the Attorney General's Department.<sup>2</sup>

While the proceedings of the presidential commission of inquiry was underway, there were instances of main witnesses being intimidated at their homes and also within the presence of the BMICH where the presidential commission of inquiry was functioning. These were serious matters which impeded the conduct of a free and fair inquiry.

**Do you think that in practice, the Victim and Witness Protection Authority has fulfilled its mandate? Any suggestions for improvement?**

This Act does provide for safe houses and medical treatment etc for victims. However, in cases where the perpetrators are from the armed forces, if the victim makes a complaint and he requires some safety, there is a national authority under the Act which has nominees from the armed forces as well as the Police Department. The victim is essentially seeking security from the same department that has deprived him of his rights

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<sup>2</sup> See further, "The Final Report of the IIGEP" (15 April 2008) The Members of the IIGEP Submit Their Concluding Public Statement on the Work of the Commission of Inquiry and Find a Lack of Political Will to Support a Search for the Truth <<http://www.humanrights.asia/wp-content/uploads/2018/07/The-Final-Report-of-the-IIGEP.pdf> >

or violated his rights. The experience in our country is that these institutions very jealously (or should I say zealously) protect their own people. There are very few examples of authorities acting to curb violent acts by their own.

**Justice has been delayed in this case due to a combination of factors. In your opinion, what are some such factors?**

The scene of the crime was not guarded although it was quite near the police station. It was about 500 metres from the police station. There is reason to believe that the police had known everything that was going to happen. Until a team of higher officials came from mainland Trincomalee (the shooting happened in Muttur which is almost an island), there was no attempt to cordon off the place to protect the integrity of the evidence. There is a strong belief that what remained of the evidence had been tampered with. There was not much evidence

produced in court. That is why it could not get off the ground. Mirusuvil massacre.

On 19th December 2000, nine villagers cycled to Mirusuvil from the places where they had taken temporary residence in order to visit their respective houses. These persons were among those displaced from Mirusuvil due to the civil war. By 4pm, having collected whatever produce they could find, they were preparing to cycle back to their temporary residences when the 5 year old child of one of the villagers noticed a guava tree and pestered his father to get him some fruits. The villagers were

making their way towards the tree when they were stopped by military personnel. Only one villager out of the nine survived the ordeal.<sup>3</sup> The case dragged on in court until 24th June 2015, when former Army Sergeant Sunil Rathnayake was found guilty and sentenced to death by the Trial at Bar in Colombo. On 25th April 2019, the conviction was affirmed unanimously by the highest court in the country. On 26th March 2020, former president Gotabaya Rajapaksa granted a presidential pardon to convicted death row prisoner former Army Staff Sergeant Sunil Rathnayaka.

**The legal proceedings related to the Mirusivil massacre spanned across fifteen years. What were the reasons for these delays?**

The war was going on at the time. This was a reason for the delay. However, the identification parade was held properly and the perpetrators were identified. The trial at the bar was in Colombo and not in Jaffna where the incident occurred. This aspect too contributed to the delay. Further as there were three judges at the trial at the bar panel, some were promoted which resulted in new judges being appointed and so on.

**There were numerous changes made to the bench during that time. What was the impact of these changes on the proceedings and outcome of the case?**

There were numerous changes made to the bench at the time,

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<sup>3</sup> Sunil Ratnayake v Attorney General SC TAB 01/ 2016 (SC Appeal No. 19/2003 TAB: HC Colombo 1092/2002)



but these were not deliberately done. When it came to the Trial at Bar, these were high court judges and they get their promotions, so several judges had to come in.

**The Supreme Court judgment highlighted that it is “highly improbable if not impossible for a single person to commit all these acts.” Did the indictments (and convictions) sufficiently capture the involvement of the military and the chain of command of the personnel linked with the case?**

In our country, investigations are left to the police entirely whereas in other countries like the US, a magistrate or a district attorney spearheads or supervises the investigation. In this instance, I will not blame the police because all necessary action was taken and it so happens that when several accused are brought in, their role and participation, it can be blurred due to the evidence available. In this instance, at least one person was proved to have positively taken part in the massacre.

**What are your reflections on the admissibility of confession which became an issue during the proceedings, compared to how the same issue was dealt with in the Krishanthi Kumaraswamy case?**

In my opinion, no confession should be admissible. Just because this case failed because of that aspect, confession to a police officer is not something we should encourage because it will lead to abuse of the process. We cannot apply the law in an ad hoc manner. For example, if the death penalty is bad, it is bad for all. You cannot make exceptions.

What we should work on is enhancing the investigative ability, giving proper training, and improving the independence of these institutions.

### **What are your reflections on the presidential pardon of convicted Army Staff Sergeant Sunil Ratnayake?**

The presidential pardon is flawed in many ways. It should not be given to persons who had been convicted/ found guilty of heinous crimes. There can be exceptions but here it is the highest court of the country which has affirmed the decision of the Court of Appeal. So it has gone to the highest court. The second thing is that the person pardoned was responsible for a crime of a very cruel murder including that of an infant and there was no cause at all to fire on innocent people. Thirdly, the procedure is also flawed. There's doubt whether the president had the benefit of the advice of the Attorney General, the Chief Justice and the judges who convicted this person.

### **Bindunuwewa massacre**

On 25th October 2000, an armed mob attacked and killed 27 Tamil detainees in the Bindunuwewa detention centre, in spite of the presence of the police. The remaining 14 detainees were seriously injured. The case was tried against 41 accused persons before a Trial at Bar. 18 accused were called upon for their defence and at the conclusion of the trial 13 were acquitted. On 1st July 2003, 5 were convicted and sentences imposed. The Trial- at- Bar had ruled that the accused police officers on guard duty at that time were criminally responsible on the basis that

they had the ability and the means by way of troops to control and prevent the situation. Departing from this reasoning, a Divisional Bench of the Supreme Court held that intentional actions had to be proved on the part of the fourth accused police officer in order to find him liable.<sup>4</sup> The Court overruled the conviction by the Trial-at-Bar and acquitted the accused.

**The Bindunuwewa massacre has exhausted all available judicial processes, culminating in the acquittal of the four accused in the appeal before the Supreme Court. In your view, what are the reasons for this outcome?**

It was on a point of law that the Supreme Court acquitted the convicted persons.<sup>5</sup>

Evidentiary issues (insufficient evidence/false evidence/etc.) were among the cited reasons for the acquittal of the four accused in the Supreme Court judgment. What were the difficulties faced in gathering sufficient evidence and testimonies for the case?

When the local police investigated, they did not do an independent investigation. There was reluctance on the part of the authorities and an attempt to hush up the matter. The outside world came to know of the massacre only a day or two later.

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4 K. Pinto- Jayawardena, 'Post-War Justice in Sri Lanka: The Rule of Law, the Criminal Justice System and Commissions of Inquiry, International Commission of Jurists (2010) pp.63-64.

5 On appeal, a Divisional Bench of the Supreme Court held, among other things, that the mere presence of a person at the place where the members of an unlawful assembly had gathered for carrying out their illegal common objects does not make him a member of such assembly. See, *Samy and others v Attorney General* (2007) 2 SLR 216.

**During the sentencing of two police officers by the High Court (which was later overturned by the Supreme Court), the officers maintained that they were carrying out orders from the top. In your view, did the indictments (and convictions) sufficiently capture the involvement of the police and the chain of command within the rehabilitation centre?**

The charges did not reflect the chain command. That was a shortcoming of the indictment.

I went to the site within a week of the incident. A whole lot of poles had been used. This was not something done haphazardly. All of the poles were of the same size and neatly made. Authorities guarding the place should have prevented the attack. As the facts reveal, the attack was carried out by the villagers, gangs, even local businessmen and it was aided and abetted by the police. It was a well-planned attack and it was clearly aided by those on duty to guard the inmates.

**The Bindunuwewa massacre is a manifestation of ethnic violence. Would you also characterise this as an incident of ethnic violence?**

Certainly, all of the victims were Tamils and the majority were from the hill country (plantation sector). For instance, one person who had been arrested 4- or 5-days prior had been picked up at the railway station for not having a NIC. They were not criminals by any standard.

## **Did the HRCSL and Presidential Commission of Inquiry inquiries have any bearing on the proceedings and the outcome of the case?**

Presidential Commission of Inquiry recommended that the government appoint a trial at bar. It only ended up in the AG filing indictments as the Commission had a limited mandate.

The HRCSL made an inquiry into the incident and wrote a fact-finding report. Was it of any use as evidence? It was part of advocacy. Once the judicial process had started there was no necessity for the HRCSL to do anything else.

### **Kumarapuram massacre**

On 11th February 1996, a group of eight to ten soldiers from the 58th Mile Post and Killiveddy camp entered the small village of Kumarapuram in Trincomalee district and massacred Tamil civilians, injuring 24 others. Among the 26 killed was a 15-year old girl, who the soldiers first physically abused and gang-raped. The case languished in courts until a jury verdict on 27 July 2016 which acquitted all six accused soldiers of all charges.<sup>6</sup>

**The collected evidence (clothes and weapons) was lost in a fire at the Government Analyst's Office, Colombo in 2005. Much of the initial testimony given before Muttur Magistrate's Court also could not be produced before the Anuradhapura Magistrate's Court. How would you**

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<sup>6</sup> 'Impunity Reigns in Sri Lanka: The Kumarapuram Massacre and Acquittals', PEARL, March 2017

**comment on the failure of the judge to mention the loss of all physical evidence and most documentary evidence (in a fire and in the tsunami) in his instructions to the jury?**

The judge did not make any reference to the fact that the evidence was destroyed in a fire. First it was taken up in Magistrate's Court of Trincomalee where the accused delayed it deliberately and then there was delay by the prosecution.

**The choice of a Sinhalese speaking jury which resulted in the selection of an ethnically all Sinhalese jury could have acted in the favour of the accused. What are your views on this?**

The jury system itself has to undergo some debate on its viability. I think in ordinary criminal cases, the purpose is served because the concept behind jury trials is that a person should be tried by his own peers. However, when it comes to emblematic cases, and a choice is given to the accused to choose a trial by jury or a judge, the next choice is whether it is a Sinhalese speaking or Tamil speaking or even English speaking jury. If we consider an ordinary crime, a violent crime- the accused would not choose a jury and would instead choose a judge because the judge would not be influenced by the media portrayal of the incident or prevalent emotions. But here when the accused chooses a Sinhalese speaking jury, that person can exploit the emotions of a particular group of society because this group of people can be influenced by contemporary happenings. In ethnically inspired crimes, the accused would most often select a Sinhalese

speaking jury and the Attorney General has, in some matters, brought the case before a trial at bar. The Attorney General has no power to object to a jury trial. It is entirely the choice of the accused. In this case, we made an application to the Attorney General to move for a trial at bar, but it was not successful

**How would you describe your experience as a lawyer appearing for the victims of a human rights violation in which state machinery may have been implicated?**

The cases are transferred by the Attorney General exercising his fiat under section 47 of the Judicature Act. The issue here is that the victims are virtually the complainants but they are not notified. It is done behind the backs of the affected persons and without their knowledge. The law does not require the AG to notice any other parties and this is to the benefit of the accused.

We challenged the transfer of the case at the Court of Appeal on the basis that a fair and impartial trial could not be held. However, the court dismissed our application on a technicality. Mylanthanai massacre

On 9th August 1992, soldiers from the Punanai army camp stormed the village of Mylanthanai, a village 50km north of Batticaloa, and ordered villagers to leave their homes before attacking them with knives and clubs. Allegedly, the massacre was in retaliation to the killing of Major General Kobbekaduwa and seven other senior army officers who had died in a landmine attack in Jaffna. The case which was first taken up

in the Magistrate's Court of Batticaloa was transferred to the Magistrate's Court of Polonnaruwa and finally to the High Court of Colombo. The verdict of the jury was given on 25th November 2002 and all eighteen accused were found not guilty.

**The case was transferred several times from Batticaloa District to the Polonnaruwa District and finally to Colombo. What would you say are the concerns arising from this? Is it usual practice in cases such as these?**

This was during the height of the war. The identification parade was held in the Batticaloa Magistrate's Court. By all accounts, the matter should have been heard there but it was transferred to Polonnaruwa on the basis that it was not safe for the Sri Lankan army personnel to attend court in Batticaloa. This was untenable because there was an overwhelming presence of army personnel in the North and East. It was unsafe for victims and families to be dragged from their native areas. We filed an application to stop it but it was not successful. However, the Magistrate at Polonnaruwa committed it to be tried by the High Court in Colombo.

**What are the practical difficulties faced by victims and witnesses in such instances?**

After it was committed to a trial by the High Court in Colombo, it took some time for the trial to begin. Witnesses had to be brought all the way from Muttur and Trincomalee. Here too, the accused opted for a trial by jury.



Witnesses are brought by the police. Although there was no positive complaint about intimidation it was clearly overwhelming. For instance, the previous day, the Grama Sevaka would have gone and told them that they are wanted by the police. Their mental state would have been fearful. Although they are not under arrest, they are brought in police buses. That is not necessary if the case had not been transferred and if the case had instead been heard in a court in the jurisdiction where it happened. Then there would have been no need for witnesses to be herded. They could have come on their own. They could have retained lawyers to watch for their interests.

Witnesses who have to testify should have a conducive environment for that and should not be put in circumstances where they get scared. When the accused opt for a jury trial, the jury will be all Sinhalese, that is why they select a jury. The witnesses will have to stay for days. What type of shelter do they get? Jury trial will not adjourn like a trial before a judge. They have to wait for days for their turn and it's like some sort of torture for them. Sometimes the witnesses are women with small children. You must also consider the fact that they are reliving the tragedy. This transfer of cases happens only in the North and the East. The Embilipitiya case was heard in the Embilipitiya courts.<sup>7</sup> It was not transferred.

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7 More than 50 Sinhalese students were abducted and some killed when a school principal colluded with soldiers from a nearby army camp between September 1989 and January 1990. The High Court of Ratnapura convicted six soldiers as well as the school principal for conspiring to abduct, and abducting and kidnapping the students in order to murder and/or with intent to secretly and wrongfully confine them. See, Embilipitiya Case, H.C. Case No. 121/1994, High Court of Ratnapura, H.C. Minutes 23.02.1999.

**When the verdict of acquittal was given by the jury, the judge asked the jury to reconsider. The jury returned with the same verdict as before. What are your views on this?**

The judge in his charge to the jury instructed on what could be taken in account and explained what was the law. The jury were also taken up with the genuine stories people recounted and it amounted to strong evidence. The charge to the jury began on a Friday and it was not finished on the same Friday. The judge completed the instructions on the following Monday. The verdict of the jury was given on Monday.

**Are there any other concerns/ suggestions that you would like to add in relation to this case?**

No state counsel appeared for the prosecution at the non-summary trial in Polonnaruwa. In very prominent cases the Attorney-General nominates a senior state counsel to conduct the non- summary proceedings. Generally the state counsel has an important role to play in leading the evidence. The onus was on the lawyers appearing for the affected parties to lead the evidence. This was very difficult because our ability was limited by the fact that we have no authority over the police. We cannot ask the police to bring witnesses and documents as evidence but the state counsel could have done this.



# **Kholi Group: The Search for Child Soldiers<sup>1</sup>**

**-Sarala Emmanuel, Amara and Saradhadevi**

*In loving memory of Audrey Rubera'*

## **Abstract**

This paper is a reflection by three women who were involved in supporting families whose children had been abducted or often forcibly recruited into armed groups and disappeared by the State, in the Batticaloa District. It mainly focuses on the time period between 2002 – 2008 when child recruitment was extremely high in the Batticaloa district, and there were splits within the armed groups. This was the time of a ceasefire agreement in operation between the Government of Sri Lanka and the Liberation Tigers of Thamil Eelam. Saradhadevi, one of the authors, had two of her sons abducted by different armed groups, and only managed to get one of them out. Her other son has been missing since. This paper reflects on a few key stories that capture the diversity of the experiences and responses during that time. These examples describe gendered experiences, state complicity, challenges to accountability, and negotiations/resistance from women. The paper also explores processes that were important to keep movements and collective

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1 Child Soldier - A child associated with an armed force or armed group refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities. Paris Principles and guidelines on children associated with armed forces or armed groups, UNICEF, February 2007; Children in the LTTE were called Kholi group (group of chickens).

spaces going to continue resistance to child recruitment, abduction, and disappearance. Finally, the authors reflect on accountability, and the meaning of loss at the individual and community level, and what a broader truth-seeking might look like, more than a decade later.

“Already two of her children have been abducted by an armed group. Amidst her grief one day a child comes running trying to escape from an armed group. Feeling as if it were her child coming towards her, she fought with the group. Yet she lost...

*Un Pillai-a...en pillai- a?*

*Ennaku theriyathu*

*Amma enum*

*Avanathu alarulil*

*kelviyillai.*

*Ammavakiya enakku*

*Avan en pillai-ye!*

*Your child?... My child?*

*I didn't know whose child...*

*As he cries out, 'Amma!'*

*The question of 'whose child' doesn't arise*

*I am a mother*

*And he is my child.”<sup>2</sup>*

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<sup>2</sup> Pettrorin Uyirithudippu (Life pulse of parents): Children in Armed Conflict – a book of poems published by a group of parents and community members who were supporting family members searching for their children in 2008.

## Introduction

Unanimous ceasefires had been declared by the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam in 2001, followed by the signing of a formal Cease Fire Agreement facilitated by the Norwegian Government in February 2002.<sup>3</sup>

In March 2004, Vinayagamoorthy Muralitharan, alias Colonel Karuna, the LTTE's commander in the East, split from the Northern leadership of the LTTE<sup>4</sup> and founded the Thamil Makkal Viduthalai Pulikal (TMVP)/Karuna faction. The TMVP/Karuna faction, an armed group, cooperated with the

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3 "In late 1999 and early 2000 the LTTE launched a major offensive in the north and east, seizing new territory and inflicting large losses on government armed forces. Unilateral ceasefires declared by both the government and the LTTE in late 2001 were followed by a formal Cease Fire Agreement (CFA) in February 2002. Under the CFA the Government of Sri Lanka (GOSL) and the LTTE, facilitated by the Norwegian government, agreed to set up an international monitoring mission, the Sri Lanka Monitoring Mission (SLMM), to monitor implementation of the CFA and to enquire into and assist parties in the settlement of any disputes related to the Agreement. The SLMM currently consists of civilian and military members from the five Nordic countries, Norway, Sweden, Finland, Denmark, and Iceland. Peace negotiations facilitated by the Norwegian government started in Thailand in September 2002. Until early 2003 all indications were that the peace negotiations were making tangible progress. Six rounds of talks between the government and LTTE were conducted over a six-month period (commencing September 2002) through which there emerged indications of consensus being reached on internal self-government in the north and east through a federal system. This received widespread endorsement and support, backed by a large but conditional aid commitment from the international community. Meanwhile, the incidence of violations of the CFA that had formalised the truce started rising. In April 2003 the LTTE announced its withdrawal from the negotiations, ostensibly as a gesture of protest at not being invited to an international forum on aid to Sri Lanka and against its continuing proscription in the United States". See Charu Lata Hogg, 'The Liberation Tigers of Tamil Eelam (LTTE) and child recruitment' Coalition to Stop the Use of Child Soldiers, Forum on armed groups and the involvement of children in armed conflict (2006), available at <[https://reliefweb.int/sites/reliefweb.int/files/resources/7BB27FE2EF467242C12572D70020C38D-Full\\_Report.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/7BB27FE2EF467242C12572D70020C38D-Full_Report.pdf)>

4 Liberation Tigers of Tamil Eelam (LTTE) systematically recruited and used child soldiers throughout the 25-year armed conflict with Sri Lankan government forces which began in the early 1980s and ended in May 2009.

GoSL to fight against the LTTE. Sivanesathurai Chandrakanthan alias Pillayan, the TMVP's second in command, again split from the Karuna faction in 2007 and declared himself the new leader of the TMVP. The TMVP formed a political party in 2006 and stood for Provincial Elections in 2008 with the United People's Freedom Alliance (UPFA) led by the then President Mahinda Rajapaksa and won 20 out of 37 seats in the Eastern Province making Pillayan the first ever Chief Minister of the Eastern Province<sup>5</sup>.

Meanwhile, 6,248 cases of child recruitment by the LTTE, including 2,469 girls, were reported to UNICEF between January 2002 and December 2007. According to the UNICEF records 453 cases were of children recruited by the Karuna faction. Actual numbers of recruitment are thought to be significantly higher (UNICEF, 2008).<sup>6</sup> Most of the reported cases of child recruitment by the LTTE occurred in Batticaloa, but there were also reported cases in Jaffna, Kilinochchi, Ampara and Mullaitivu, as well as Polonnaruwa.<sup>7</sup> Even with repeated calls for investigation of alleged state complicity in child recruitment by several international bodies, this did not take place<sup>8</sup>.

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5 Canada: Immigration and Refugee Board of Canada, 'Sri Lanka: The Tamil Makkal Viduthalai Pulikal (TMVP) and Karuna factions; their relationship with each other; reports concerning their treatment of Sinhalese and Tamil citizens; whether they are still active as paramilitary groups' (2012), available at <<https://www.refworld.org/docid/4f4f35d22.html>>; 'Pillayan sworn in Chief Minister', The Hindu, 17 May 2008 <<https://web.archive.org/web/20080518091851/http://www.hindu.com/2008/05/17/stories/2008051760251400.htm>>

6 No Safety No Escape: Children and the Escalating Armed Conflict in Sri Lanka (April 2008) Watchlist <<https://resourcecentre.savethechildren.net/pdf/4012.pdf/>>

7 ibid

8 No Safety No Escape: Children and the Escalating Armed Conflict in

The Karuna faction was responsible for high rates of child recruitment and by 2007, reportedly he had 1800 child soldiers under his command. Often the children were from poor, rural families and sometimes they were paid a monthly salary which the families found useful.<sup>9</sup>

Sri Lanka ratified the Convention on the Rights of the Child (CRC) in 1991 and the Optional Protocol on the Involvement of Children in Armed Conflict in 2000. However, in 2006 the Sri Lankan Supreme Court declared that “neither United Nations conventions signed by Sri Lanka nor the directives of monitoring bodies are binding on the country”, removing obligations under International Law.<sup>10</sup>This placed the efficacy of the CRC and the optional protocol in a legal grey zone in Sri Lanka.

In August 2003 as part of the peace negotiations, the Sri Lankan Government and the LTTE had agreed to an Action Plan put forward by UNICEF to monitor, tackle and report on child rights violations in the North and East, including access to education, nutrition as well as child recruitment. In its monitoring role, UNICEF had noted that while few children were being released many more were being recruited as child soldiers in 2004.<sup>11</sup>

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Sri Lanka (April 2008) Watchlist <<https://resourcecentre.savethechildren.net/pdf/4012.pdf/>>

9     ibid

10    SRI LANKA: Supreme Court removes country from obligations under international law, raises unprecedented questions for UN, Statement by the Asian Human Rights Commission, 17 September 2006 <<http://www.humanrights.asia/news/ahrc-news/AS-216-2006/>>

11    UNICEF urges Tamil Tigers to stop recruiting child soldiers in Sri Lanka, 22 January 2004 <<https://news.un.org/en/story/2004/01/91882>>



In 2006, Allan Rock, the Special Advisor to the UN Representative on Children and Armed Conflict carried out a 10 day visit to Sri Lanka to monitor the compliance with the above Action Plan. According to the plan the LTTE had agreed to releasing all child soldiers before the 1st of January 2007. The LTTE had also enacted the The Tamileelam Child Protection Act 2006 (Act No. 03 of 2006) making education compulsory up to grade 11. The Act also mandated registration of all child births, proscribed all forms of child labour, outlawed enlisting of children under 17 years in armed forces, and made participation of under 18 year olds in armed combat illegal. However, not only did Allan Rock fail to find any impact of this legislation on the ground, he observed that the LTTE themselves continued to recruit children and failed to show any signs of implementing their undertaking to UNICEF or their own law.<sup>12</sup>

State complicity and inaction towards child recruitment into the Karuna faction<sup>13</sup> and later the Pillayan faction was a well-known

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12 Collateral Victims: Allan Rock's Mission on Child Soldiering in Sri Lanka, Institute of Peace and Conflict Studies (18 November 2006) <[http://www.ipcs.org/comm\\_select.php?articleNo=2149](http://www.ipcs.org/comm_select.php?articleNo=2149)>

13 The Karuna group broke away from the LTTE in March 2004, with an estimated 5,000 to 6,000 fighters, many of them under-18s. It was led by Vinayagamorthy Muralitharan, known as Colonel Karuna; its political wing was the Tamil Makkal Viduthalai Pulikal (TMVP). It consisted mainly of former LTTE cadres from the east of the country. On the verge of defeat at the hands of the LTTE in April 2004, Karuna disbanded his troops and sent thousands of under-age fighters home. Over the next two years, as he slowly regrouped and began to wage more effective attacks on LTTE forces in the east, the Karuna group resumed forcibly recruiting children. By the middle of 2006, this was occurring on a large scale <https://www.refworld.org/docid/486cb131c.html>; By 2006, Karuna had regrouped and was working in cooperation with government security forces. In 2004 Karuna established a political party, the TMVP, which was formally registered in 2007. In late 2007, Karuna split from the TMVP. In early 2009 he and some 1,750 cadres loyal to him joined the ruling Sri Lanka Freedom Party (SLFP) and Karuna was sworn

fact. The Karuna faction opened political offices in towns in the East in 2007 which often had police protection. Children were often kept in these offices before being moved to other locations. During transfers of child soldiers, the Karuna faction vehicles often passed checkpoints of the Sri Lankan military who checked all vehicles. Also, when parents made complaints to the Police and other military camps about child abductions, no action was taken.<sup>14</sup>

*“We saw our children on the top floor of [Karuna’s political party] office. We were three mothers of children taken from here. The children signaled to us that we should go or they would get hit.”*  
—Mother of an abducted child, October 2006.<sup>15</sup>”

*“In another village, the Karuna group abducted 13 boys and young men, holding some of them for a while in a shop. Across the street was an army post and some of the parents pleaded with the soldiers to intervene. Two soldiers spoken with the Karuna group members, parents told Human Rights Watch, but the soldiers did not stop the abduction.”<sup>16</sup>*

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in as Minister of National Integration. Both the Karuna group and the TMVP (headed by Sivanesthurai Chandrakanthan (known as Pillayan)) continued to utilise armed cadres, including under-18s.

14 No Safety No Escape: Children and the Escalating Armed Conflict in Sri Lanka (April 2008) Watchlist <<https://resourcecentre.savethechildren.net/pdf/4012.pdf/>>;

Child Soldiers International, Child Soldiers Global Report 2008 - Sri Lanka, 20 May 2008 <<https://www.refworld.org/docid/486cb131c.html>>

15 Complicit in Crime: State Collusion in Abductions and Child Recruitment by the Karuna Group, Human Rights Watch (January 2007) <<https://www.hrw.org/sites/default/files/reports/srilanka0107webwcover.pdf>>

16 *ibid*

Many parents were searching for their children, going from camp to camp. When the Eastern Karuna faction split, family members were extremely worried for their children's safety. According to a Human Rights Watch Report (2004):

*“All the people came to fight, even children... More than 1,000 people were fighting [to demand the return of their children]. All the people came to the roadside when this happened. In every area, people were blocked and were fighting... We spoke directly with the assistant political leader. He told us, ‘We came to protect you.’ At the same time, our people asked them—both Prabbakaran’s and Karuna’s people, ‘You took our children from us and now you are shooting those children... Why are you shooting these children? You say you are Tamil leaders so why are you killing Tamil people? Please give us our children back and then you can go away.’”<sup>17</sup>*

In 2009, UNICEF was pressuring the Pillayan faction to release children abducted and given military training. According to the UNICEF report hundreds of children had been abducted by Pillayan between 2006 and 2008.<sup>18</sup>

With the end of the war in 2009, large numbers of child soldiers were arrested/ ‘surrendered’ to the Sri Lankan State. According to official estimates more than 11,000 LTTE combatants were in custody, and forty percent were children under the age of 18 years”.<sup>19</sup> This amounted to 4400 children. Under the control of

17 Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka Human Rights Watch (November 2004) <<https://www.hrw.org/sites/default/files/reports/srilanka1104.pdf>>

18 ‘Paramilitary releases 15 young recruits in Batticaloa’, Tamil Net, 22 January 2009 <<https://www.tamilnet.com/art.html?catid=13&artid=28103>>

19 ‘Child soldiers ‘to be released soon’ BBC Sinhala, 7 February 2010 <[https://www.bbc.com/sinhala/news/story/2010/02/100207\\_child\\_](https://www.bbc.com/sinhala/news/story/2010/02/100207_child_170)

the military, State bodies such as the National Child Protection Authority were involved in ‘rehabilitation processes’ of these children.<sup>20</sup> However, by February 2010, these children had still not been handed over to their families. The head of the National Child Protection Authority (NCPA), Jagath Wellawatta, told BBC Sandeshaya that the government was committed to hand over all former child soldiers to parents and relatives after a one year rehabilitation programme. However, as per another news report from June 2010, a year after the end of the brutal war, some 200 children were in school far away from their hometowns, overseen by Brigadier Sudantha Ranasinghe.<sup>21</sup>

By 2012, Sri Lanka had been removed from the UN conflict blacklist due to the “progress made in child welfare” based on the rehabilitation programmes run by the military<sup>22</sup>. However, news reports noted that 1400 children who were fighters were still missing.<sup>23</sup> By 2012, the complicity and the failure of the UN in protecting the people of Sri Lanka had come to light. This included the organisation’s failure to publicise data about the human toll of the fighting as casualties mounted and instead withdrawing UN staff from zones where much of the killing took place. Apart from the failure of the UN during the last stages of the war, the continued legitimisation by UN bodies

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soldiers>

20 ‘Sri Lanka’s child soldiers’, Aljazeera, 25 October 2009

<<https://www.aljazeera.com/news/2009/10/25/sri-lankas-child-soldiers>>

21 ‘A Sri Lankan re-education for Tamil child soldiers’, BBC News, 5 June 2010 <[http://news.bbc.co.uk/2/hi/programmes/from\\_our\\_own\\_correspondent/8721974.stm](http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/8721974.stm)>

22 Sri Lanka removed from UN child conflict blacklist, BBC News, 12 June 2012 <<https://www.bbc.com/news/world-asia-18407824>>

23 *ibid.*

of the militarised rehabilitation processes mentioned above, hindered the call for accountability for war crimes which was being raised by civilians and other civil society institutions in the country.<sup>24</sup>

### **Abduction of Children and the Making of Child Soldiers**

As we reflected on our experiences of responding to different incidents of child abductions, we chose three instances to highlight the complex stories. The common factor underlying all the stories was the impunity of all the actors who were involved in abductions and recruitment of children. The failure in responsibility to protect children fell on everyone including, the police; the military who had control of the East at that time; family/community members who were complicit in the abductions; the LTTE, and the leaders of other armed groups who were working closely with the State namely Karuna and Pillayan. What was lost was lives, childhood, a sense of safety, education and emotional wellbeing. For girls, even when they were returned, they were further burdened with social stigma within their own families and communities. The assumption of them being victims of sexual violence haunts their whole lives.

### **Navaneethan, Navatheesan<sup>25</sup>**

Saradhadevi reflected that, during the war years there were several reasons why children joined the LTTE. Sometimes it

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24 'UN failed gravely in Sri Lanka - internal review panel', Reuters, 15 November 2012 <<https://www.reuters.com/article/srilanka-un-idINL1E8ME83420121114>>; 'UN report damns failings during Sri Lankan civil war climax', Guardian, 14 November 2012 <<https://www.theguardian.com/world/2012/nov/14/report-damns-un-sri-lanka> >

25 We have used the actual name of Saradhadevi's son.

was conflicts in the home with parents. More often it was due to poverty, too many mouths to feed and not enough food. Sometimes parents neglected children and did not send them to school. Sometimes when there were conflicts in the school or teachers pulled them up for something, children were disturbed, had nowhere to turn and saw joining armed groups as an escape. There was also peer pressure, one child will become a conduit to convince others to join. There was also a broad-based culture of romanticizing guns - militants let children hold the guns, and later they would join because they felt excited about being given a gun. Then of course there were the times they were taken by force or abducted. A culture of not just exalting violence in general, but also the absence of enough attention to children, their needs and challenges they lived through in their ordinary lives, further strained by conflict, became a key reason for children joining armed groups. Given this context and the generally complex ways in which we must understand 'choice' of non-adult persons, any claims of children joining armed groups 'willingly' leaves much to be carefully unpacked. It is in this context that Saradadevi's son Navaneethan grew up.

### **From October 1996 Onwards: Saradhadevi Narrates the Story of Her Sons**

As for my son, his father was shot by the army in 1992, so there was this anger inside him. I was working that day and had to stay the night in Kalmunai, a town an hour and a half away from my home. My son had gone to his uncle's house to ask for some money for Saraswati poosai related expenses.<sup>26</sup> He went with a

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26 Hindu festival for the goddess Saraswati

friend. When they were there, both boys were taken by Sinna Vengaiyan, a local level LTTE leader. He had threatened to shoot them unless they came with him. They had been taken to the Karadiyanaru agriculture farm which was an LTTE training camp. When I came home two officers from the Criminal Investigations Department visited my house. They were from the Kommadurai army camp. They had already heard that he had been taken.

Navaneethan was born on 26th June 1981. He was 15 when he was forcibly recruited.

*I went to the Karadiyanaru farm and as I walked in, I could see a building and I could hear voices. I heard my son's voice. I kept shouting 'Navaneethan come outside! Veliye va! I can hear your voice'. They told me he was not there; they pointed a gun at me and told me to go and wait in another building. Later an old man who brought me tea said all the children were blind folded and taken away in a tractor from the back gate while we waited in the front of the camp. They had been kept for 3 days in the jungle and then brought back to the camp. I did not see him after that for 3 years. Whenever he met someone from our village, he would send a message for me that he was alright.*

*He was a very clever boy, so they trained him to write down radio messages. He also did electrical work and repaired machinery. I had also taught him to cook and keep the house clean. So, all this made him very useful to the movement. I constantly worried about him.*

*Once we were told to come to Tharava<sup>27</sup> to visit for the new year festival. I went with my three kids and my sister who came with her three kids. They gave us tea and dodol. But he was not there.*

*He came home only once during those three years. He had been put in the intelligence section. The darker children who looked strong were usually put to fight in the jungle. The fairer ones were put in the intelligence group as the army would not suspect them. The army usually suspected dark skinned people as being militants.*

*In the fourth year, he came on leave for 5 days. I was very worried as to why they sent him home, usually it meant they were sending him somewhere dangerous after. While he was home, one day there was an army round up. An army informant in the village had told them that a tiger had come home on leave. His cousin made him lie on her lap and put turmeric on his face and said he had chicken pox. The soldiers didn't come into the house.*

*He also had two shell pieces in his head from an injury. I was able to quietly take him to a hospital in Eravur, a Muslim town and got one of the pieces out. Those days the Muslims did not inform on us and so this hospital was safe. This was when he told me all the stories of what had happened to him. He was also not sleeping well. His friend's gun had misfired, and he had died. Navaneethan was scared because his friend's ghost was constantly troubling him. He had a fever because of this. I managed to take him to a village healer who helped him to be released from the ghost.*

*I next saw him in 2000. He had run away from the LTTE. Several children had run away. Other families were able to pay money and immediately send them out of the country. I couldn't do that. I hid him in the house for 10*

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27 Tharavai was a small village in rural Batticaloa.



days. I was trying to get him his ID. Then they (the LTTE) came for him. Four of them came to the house. I kept asking them 'who are you? Where are you taking him?' He was wearing a T-shirt that I had been gifted by a foreigner working in Batticaloa. It was white and had musical instruments on it. They hit my daughter while taking him away.

When I went looking for him, they said he will be punished for 6 months for running away. Later I heard he had tried to swallow his cyanide capsule because he did not want to be there anymore, but that they had stopped him.

I waited and waited for news of him. In 2004, I went for a big Mahavir<sup>28</sup> event they had organised. It was the ceasefire time, so thousands of people had come for the event. I was hoping I would get a glimpse of him. I looked and looked for him, but I didn't see him.

Keeping my children safe was a constant battle. That's why I put my daughter in a hostel. I was a single mother; I was working to earn a living. The terror of my children being taken was a constant feeling I lived with.

My other son was taken in a white van in 2005. Four boys were taken at the same time. He had just come home from school. I ran to the Pillayan office looking for him. But they said he was not there, I also checked through someone I knew who knew someone who was inside the office. They also said he was not brought there. Three days went by before I realised Karuna had another office in town. Later I checked in their office through someone who knew someone in the office, and I heard he was there. When they realised it was my son, they said they will let him go. I had some respect as my husband had been killed by the army and already my son Navaneethan was with them. There was also respect for the work I did for the community as a

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28 LTTE Martyr's Day event where those who had died while fighting were celebrated as martyrs.

*counsellor and a teacher.*

*Again in 2006, when my third son was visiting his new-born child in the Batticaloa hospital, he was abducted from the hospital entrance. Again, I ran to the Pillayan office and found they had beaten him mistaking him for someone else. I was so angry but did not show it.*

### **Pushpa 2008<sup>29</sup>**

It was 2008, the Sri Lankan military had secured control of the Eastern province from the LTTE.<sup>30</sup> Armed abductors came in a white van in the night and took away two 16 year old girls from a small coastal village in Batticaloa. Men with guns surrounded the house and called the girls out by name. Both were dragged away in their night clothes. There were several military checkpoints on the road around the village as the van moved around with armed men in the night. But when mothers of the girls confronted the soldiers at the checkpoint, they claimed they witnessed nothing. Both families lodged complaints at the local police station, however, it was widely believed that the Police were behind a rumour that the girls had run away with their boyfriends and that the abduction was staged. Two months later, both girls were blind folded and dropped off near their school. They did not reveal any information of what had happened.

A few years later, while visiting the same village, we tried to meet with one of the girls. However, she sent a message that

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29 A pseudonym has been used for safety.

30 'Sri Lanka's Eastern Province: Land, Development, Conflict', International Crisis Group, 15 October 2008  
<<https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-s-eastern-province-land-development-conflict> >

she was not at home and that we should not visit. Later, we were told that she was married off to a close cousin soon after she returned and that she now had a child.

### **Kandasamy Kuhadas<sup>31</sup>**

In October 2008, 5 men, including one teenager aged 17 were arrested by the Batticaloa town police station. The next day, 2 of them were missing from the police cell, including the 17 year old boy. We were supporting the family members to inquire on the whereabouts of their loved ones from the police station as well as the SSP of Batticaloa, who in front of us made a phone call and assured us that they were alive and in their custody, and had just been taken for interrogations to another place. The two bodies, tied to concrete posts, were washed ashore in a nearby village the next day. We accompanied the families when they went to identify the mutilated bodies. As the initial inquiries were taking place in the courts, we would accompany the family members to the courts.

In a Fundamental Rights case filed by the two families, the petitioners stated that their sons were taken out from the cell by police personnel attached to the above said police station at 12 midnight on 4th October 2008. They stated that they were subjected to torture, killed while in custody, tied to a concrete post and thrown into the sea hoping that the bodies will drown. In 2017, the Supreme Court ordered the State to pay a sum of two million rupees as compensation to the parents of the two young men.<sup>32</sup>

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31 Actual name has been used

32 'SC orders State to pay Rs.2 M compensation' Daily News, 4 July 2017

## **Our Responses**

Apart from visiting individual families whose children had been taken, a group of us from the Batticaloa Peace Committee and other supportive individuals and organisations, were making small spaces for women to meet with each other. These spaces were important so that mothers felt they were not alone and isolated. They had a safe space to share what had happened, learn from each other's experiences and actions, relax, laugh, cry and be supported. The poem at the beginning of this chapter came out of a supportive process such as this, where mothers tried to describe in words, indescribable feelings of living the everyday pain of a child being taken for war.

Given the context of multiple armed actors during this time, all those challenging those responsible for abductions, specifically family members, were under constant threat and intimidation. Several civil institutions started helping families by taking in children into hostels, vocational training centers and other residential spaces within the district and outside to protect them from being recruited. This was also really important when children had run away from armed groups as they had to be hidden from the armed groups and the military.

Notwithstanding this reality, during 2006 there was a concerted effort to engage with a range of official bodies and structures; locally, nationally, and internationally. Detailed information was collected, and family members were supported in preparing the documents of abductions of 48 persons between the 13th and

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<<https://www.dailynews.lk/2017/07/04/law-order/120871/sc-orders-state-pay-rs2-m-compensation> >

20th of June 2006 – in a course of one week. All these abductions were in Government-controlled areas and 25 of the 48 were children. A petition was drafted by the families, which clearly stated that the Government had failed in its duties of protecting its citizens, and secondly, even when police complaints were made and the police were informed of the possible whereabouts of the abducted persons, they did not investigate. This petition included ID cards, birth certificates and photographs along with the list of names and other details. The petition was sent to the Chief Justice at the Supreme Court Complex – on 11th July with follow up information on the 29th July 2006. The Human Rights Commission was also sent the information particularly mentioning police inaction.

The petition was sent to the then President Mahinda Rajapaksa through Mahinda Samarasinghe Minister of Disaster Management and Human Rights and Radhika Coomaraswamy, who was Under Secretary General, Special Representative of the Secretary General for Children and Armed Conflict. However, by 2007, a year later, as none of the children had been returned to their families, the same information was submitted to Louise Arbour, UN High Commissioner for Human Rights, when she visited Sri Lanka in October that year.

13<sup>th</sup> July 2006

To: His Excellency  
Mahinda Rajapakse  
President of the Democratic Socialist Republic of Sri Lanka

Through:  
The Hon. Mahinda Samarasinghe  
Minister of Disaster Management and Human Rights

Your Excellency,

Petition for the Immediate Release of Abducted Family Members in the Government Controlled Areas of the Batticaloa District

We are the closest relatives (parents, spouses) of the abducted persons. A summary of the lists of abducted persons is attached for your information.

1. On the days between 13<sup>th</sup> June to 20<sup>th</sup> June 2006, the said persons (48 in number) were abducted from government controlled areas in the Batticaloa district.
2. It occurred in the close proximity to camps run by the government security forces.
3. Many of the abductions took place during the day time.
4. Among the abducted were children under the age of 18 (25 in number) students and main wage earners of the family.

We are deeply distressed and concerned about the safety of our loved ones. We are equally concerned that the government has totally failed in providing security for our families and allowed this to happen.

We have complained to the police about the abductions but no further investigation or actions have been taken by the police. Hence our rights to equal protection of the law have been violated.

The documents pertaining to this case have been handed over to Hon. Mahinda Samarasingha, Minister of Disaster Management and Human Rights. This petition has also been sent by registered post to the Chief Justice and The Human Rights Commission.

We would be grateful if you would take the necessary steps that would help get our loved ones back. **We share this information in the backdrop of personal life threats and intimidation by armed groups.**

Thank you,  
Sincerely,  
Group of Mothers (signatures given in Tamil letter and petition)

**Enclosure: Summary of the lists of abducted persons**

*loosing letter with second set of documents  
handed over to Ms. Panchikewa, Co-ordinating  
secretary to the Minister.*

*This was in response to the Hon. Minister's request, as the  
first set of documents had been handed over to the IGP.  
Ms. Senathil, consultant, confirmed receipt, subsequently. Andrew*

Radhika Coomaraswamy  
Under: Secretary General  
Special Representative of the Secretary General for Children and Armed Conflict  
United Nations Room S 3161A  
New York NY 10017  
USA  
15<sup>th</sup> July 2006

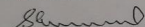
Dear Radhika,

Petition from Family Members of Abductees

Please find enclosed a petition from a group of women (and a few men) of Batticaloa, whose family members were abducted between 13<sup>th</sup> and 20<sup>th</sup> June 2006. Their petition has been sent to the Chief Justice, Human Rights Commission and Minister for Disaster Management and Human Rights. The latter, Hon. Mahinda Samarasinghe, has informed us that he would be taking up their cases with the relevant authorities and also bringing them to the attention of the President Mahinda Rajapakse. Given the failure of state authorities to conduct impartial investigations into recent human rights violations, we feel that pressure from international actors concerned with human rights would give the family members' petition a greater chance of success. It is for this reason that we have suggested that they inform you of their situation. We will also forward details of their petition to Rory Mungoven, Senior Human Rights Advisor to the UN in Colombo upon his return to the island.

We have been in contact with the petitioners and at present the most important outcome for them is the release of their loved ones. Having made formal statements to the police and subsequently participating in this petition will place the families under serious threat of intimidation and violence. We therefore hope that interest in their situation from international human rights actors, such as yourself, would provide them some degree of protection.

Yours Sincerely,

 *Amara*  
Amara Hapuarachchi, Audrey Rebera and Sarala Emmanuel  
C/o Non Violent Peace Force  
Main Street Valachenai  
Sri Lanka

Above are the covering letters prepared by Amara and Sarala, along with Audrey Rubera, who was a long-standing human rights activist. Audrey passed away in 2021. Amara and Audrey had been close trusted friends for over many decades. Audrey always gave us strength, courage, and faith to keep going. We quietly prepared and checked and double checked all the documents, Sarala learning from Audrey how to be extremely conscientious. Over cups of tea, Sarala, eight months pregnant, and Audrey, slowly worked on the files which were sent out to different government bodies. Audrey's hand written notes are at the bottom of the letter.

Our primary work was with parents and family members who were desperately searching for their loved ones. Pushpa's brother, Kugathas's sister, and Saradhadevi herself were searching for their loved ones every day or searching for the truth about what happened. Kugathas's sister, herself a young unmarried woman, was trying to live with the death of her young brother while also taking on the State for his torture, disappearance and killing. Pushpa's brother, later committed suicide.

### **Our Reflections**

The following reflections are from several slow and quiet conversations had between us, who are trusted friends over the past 15 years. The written words do not do justice to the process of these reflections and the depth of feeling. We talked about the importance of stories and memories. In the stories some factual information comes to light. In that information there will be some discernible truths. The truths may not



lead to knowing ‘who’ or ‘how’ of the incident or lead to any form of accountability or retribution. However, it could bring about small but worthwhile shifts in communities, people and relationships. This, in turn, would create more spaces to tell and listen to the stories. We tried to capture the importance of the stories even when they are often seeming ‘incomplete’, in the context of living with the gaping hole of a missing loved one, especially a child.

Saradhadevi says:

*In 2005, one day a man came looking for me. He was a businessman from Vavuniya. He had been abducted by the LTTE to extort money and he was brought to Batticaloa. When he was released, he came looking for me, because my son had been the one who oversaw his care. They had spoken a lot and he had looked after him with care. He came to thank me and said he can support my son in any way in the future.*

*Later in 2006, I heard that they had sent my son to the Vanni. I heard that the person in charge of them had killed 30 people, including my son, and run away.*

*Another story I heard was that he was shot because of a disallowed romantic relationship with a girl. They told me the gun was given to the girl's hand and she was ordered to shoot him. I still don't know what really happened to him.*

*I know one of my friends knows what happened to my son. She lived close to where he used to be stationed. Once, she let it slip that she knew him. But she has not yet told me what she knows, and I have not been able to ask*

*directly. So, there is a silence between us.*

*Sinna Vengaiyan who first abducted my son, is now dead. Before I die, I want to ask Jegan and Arulraj who were his superiors why they killed him? Did they shoot him? When and why?*

*I used to go search for him on my leave days from work. I would go to Illupadichenai, a village far from my home, and ask people in the shops, auto drivers, people on the road if they had seen him. I would get little bits of news sometimes.*

*My daughter blames me still for him being taken. She says that Navaneethan left because I put her in a hostel. If she was home, he would have stayed also. I continue to live with these accusations.*

*I did not make a complaint to anyone at that time. I was threatened that if I make a complaint with the ICRC, they will kill my son and throw his body at my doorstep. During that time someone in the village would have informed them that I went to the ICRC. We all lived in an atmosphere of mistrust.*

*I feel he is not alive anymore. I never got a death certificate or compensation. I did not want to. Compensation is not justice. My other children lost a brother, I lost the chance to have grandchildren, a son who will help me and look after me and love me.*

*When my grandson was born, Abi, I felt it was the spirit of Navaneethan. Abi is so much like Navaneethan in his qualities and how he looks. I could not raise my own son, so I am raising my grandson.*

*Later as part of my work, I ran children's programmes with child soldiers who were released during the ceasefire. Their biggest question was 'why did my mother give me away? Why me and not my other brothers and sisters?' This was in reference to the LTTE insisting that 'one child per house be given for the nation'. One mother once told me, 'We had to choose one and so we chose the strongest, hoping they are the one who will most likely survive'. For the child, this choice by their parent felt like they were not loved enough and that's why they gave them away. These children were so disturbed as a result of this experience that even when they were in the rehabilitation centers, they would fight with each other and even informed on each other to the army.*

*Looking back now, in the same family people have different political opinions about the armed struggle and armed groups. One cannot sometimes talk about these things at home as it can turn into a fight. Men who have returned have become alcoholic. They cannot face the fact that they have no status or respect in the community anymore.*

*Sometimes I challenge those who were part of the armed groups, I ask them did you save any lives while you were there? Did you protect people? Then good things will come to you. If you only killed people, then you will suffer.*

Saradhadevi's account highlights the deep ruptures in childhood experiences making a sense of safety unattainable for children during this time in this area. Growing up without these foundational attachments has a long lasting impact on their individual, familial and collective life. As the entire community was subjected to such conditions, there is a deep feeling of

mistrust within the community. Simultaneously, there was an enormous pressure to collectively subscribe to the discourses espoused by those who claimed to represent the community, all of whom were armed at that time. Martyr's Day functions attended by thousands is often taken as proof of the social acceptance of the LTTE and other armed groups by the community. When Saradhadevi speaks of how she attended the event hoping she would catch a glimpse of her son, one cannot help but wonder how many such mothers joined the crowd hoping to catch a glimpse of their children who had been forcibly abducted by armed groups.

All these realities are gendered experiences that often exist as pure wrath and grief of a mother. There is absolute clarity about the justness of the cause of a mother looking for her abducted child. It was not about any laws; anger about this injustice came from a deeper place and was unsaid but collectively understood by everyone. A decade later, these feelings still remain within Saradhadevi as observed in the above quote. The enabling conditions and spaces for her and countless others like her to express these feelings, however, remain absent.

Justice and truth are deeply linked. We must create processes for the truth to come into the open. Others who were in the cell with Kugathas for instance know what happened that night, but the environment has still not changed for them to speak the truth. Those who were in power then are still in power and this maintains the silence and fear.

In 2008, provincial elections were being carried out with the Mahinda Rajapaksa led United People's Freedom Party (UPFA) and the Pillayan led Tamil Makkal Viduthalai Pulikal (TMVP) standing together on a common platform for political power. The Supreme Court judgement, mentioned earlier, pushed obligations under international monitoring mechanisms into a grey area. International bodies such as the UN, legitimised the state-run militarized rehabilitation programmes, in the post war context. Child recruitment, among other terrible crimes, were continually committed, by these very same actors, including the state, even in the post war context. As a result of all this an environment that would have enabled the truth and accountability was never created.

It is in this light that we strongly feel that while many armed groups are responsible for child abduction and recruitment, it is the State that is obligated to ensure that the social and political environment is created for a process of truth and justice, to take shape. In the context of such profound impunity for the heinous crime of denying children their childhoods, in the least we must ensure spaces to remember, speak the truth, grieve and heal as part of a process of ensuring justice and hopefully non-recurrence.

Meanwhile, culturally, forgetting and hiding the past is encouraged in homes in the war affected areas. However, if it is not to happen again then, we have to speak about what happened and create a culture that supports speaking hard and complicated truths. Those who were child soldiers themselves

hold truths including being witness to and complicit in war related crimes. A process that enables these histories and truths to be shared - sometimes with mothers like Saradhadevi who want answers, and sometimes inter-generationally within families - is imperative for accountability and healing. In our work we have also grappled with deeper questions such as 'what do we need to prepare, to help individuals and communities to figure out what they want to do with the truth once they hear it?' Perhaps knowing the truth is not the end but the start of another complicated emotional journey. Yet, there must be an acknowledgement that expressing ourselves is an essential part of healing - individually and collectively.

More than a decade later, we talked about what was taken away from us. Some of the children have come back home. They have their own lives now as adults and their own families. What was lost then is their childhood, the childhood of an entire generation. We cannot compensate for that loss. However, the need to find ways to grieve the loss collectively are an essential part of healing. This process of grief has to be for the elders as much as it is for those who were children. As a way of creating space to remember and grieve, the loss can be marked through a community space, park or monument that is for the community, including the children of today. In this space the lost childhood of children who were abducted, recruited, injured, killed and disappeared could be memorialised. Without such public acknowledgements of injustice and loss, our past will remain shrouded in silence, our present will remain shrouded in fear, and our futures will be close to impossible to imagine.



# Addressing the Missing Elements of Justice for the Disappeared in Sri Lanka: Investigating Unmarked Gravesites and the Identification of Human Remains<sup>1</sup>

-Mirak Raheem

## Introduction

One of Sri Lanka's most (in)famous disappearance cases to be taken up before the courts was the Embilipitiya Case. It is seen as emblematic of a particularly dark chapter in Sri Lanka's history where large scale disappearances were a central feature of the brutal violence and horror that engulfed most parts of the island, caught between a civil war (1983-2009) and a Marxist insurrection during the 1988-1990 period. The case before the courts relates to the abduction of 48 schoolboys, between the ages of 15 and 19 from and around the small town of Embilipitiya on the lower hills of Sabaragamuwa region. This was part of a much larger pattern of abductions, detention, disappearances and extra-judicial killings in relation to the JVP's brutal insurgency and the State's ruthless crackdown.<sup>2</sup>

The circumstances of the disappearances, as revealed in court testimonies and eyewitness accounts, proved particularly macabre and spoke to the horrors of the time. The alleged

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1 The author is grateful to Sajini Fernando, Chulani Kodikara and Bhavani Fonseka for their comments and suggestions on the draft chapter.

2 Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces, Volume II, Sessional Paper No. V, 1997, Department of Government Printing, pp 62-77.



motives for the abductions carried out between 1st August 1989 and 30th January 1990 ranged from the seemingly innocuous and commonplace schoolyard type tensions (a clash at an inter-school cricket match and the teasing of a boy over a love letter he had written), to more insidious political and violent motives (suspicions that the boys were involved in anti-state political activities). That the first accused was D. Lokugalapaththi, the principal of the Embilipitiya Maha Vidyalaya, which many of the victims attended, and father of Chaminda who was the author of the love letter and captain of the cricket team, highlighted the rampant culture of impunity. Despite the State's claims of ignorance of and denial of involvement in these heinous crimes, evidence was provided during the court proceedings to prove the involvement of military personnel from the nearby Sevana army camp in the abduction, detention and inhumane treatment, including torture of the youth.<sup>3</sup>

The Embilipitiya Case is heralded as a judicial success, as it is a rare instance where the Sri Lankan State was able to prosecute and sentence perpetrators involved in the crime of disappearances.<sup>4</sup>

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3 The 6th Artillery Regiment ran the Sevana Army Camp and were held responsible for the violations (Dayananda Lokugalapaththi and Eight Others v. the State (Embilipitiya Abduction and Murder Case), Sri Lanka Law Reports, <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/067-SLLR-SLLR-2003-V-3-DAYANANDALOKUGALAPPATHTHI-AND-EIGHT-OTHERS-v.-THE-STATE-THE-EMBILIPITIYA.pdf>, p. 373, lines 281-291; 'Unresolved "disappearances" in the period 1987-1990: The case of Sevana Army Camp', Amnesty International, October 1991, AI Index ASA 37/18/91, pp. 3-4; The Final Report of the Commission of Inquiry, Op cit., p.56).

4 Note that the crime of disappearances was not recognised in Sri Lankan law until 2018. The crimes for which they were prosecuted did not include murder or disappearance but intention to murder and to dispose of those in detention. (See Dayananda Lokugalapaththi and Eight Others v. the State. Sri Lanka Law Reports, pp. 367-8).

The struggle for justice<sup>5</sup> in court faced a variety of hurdles, including a hostile political context, but following a general election,<sup>6</sup> the Attorney General directed the CID to arrest the principal, Commander of the Regiment, Rohan Liyanage and 7 others and filed charges in the Embilipitiya High Court for charges in October 1994.<sup>7</sup> In February 1999 the Ratnapura High Court found Galapatty, Liyanage and 5 others guilty and sentenced them from 5 to 10 years rigorous imprisonment.<sup>8</sup> Despite this ‘judicial success’, the Embilipitiya Case serves as an illustration of the limitations of the judicial system with regard to addressing disappearances in the country. More than 31 years after the disappearances, family members of the disappeared students are still waiting for information of the fate of their family members. That the case went through magisterial inquiry and a Trial-at-Bar without this most fundamental question being resolved is striking.

### **Arguments to Consider**

In contrasting the common conceptions, even among lawyers who work on human rights cases, of the ‘success’ of the Embilipitiya Case with the views of families of the missing and

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5 A principal actor in the struggle for justice was the Embilipitiya Disappeared Students’ Parents Organisation (EDSCPO).

6 In August 1994 the People’s Alliance, that had pledged to bring an end to the “bheeshanaya” and find justice for the many thousands of families of disappeared and killed, came to power.

7 “The charges, a total of eighty, ranged from the “wrongful confinement of a named person for a period exceeding 10 days” to the “conspiracy to abet the abduction of a person in order that he may be murdered or be put in danger of being murdered.” (The Final Report, Op cit., p.9)

8 Historicaldialogue.lk, Records of the Secretary S.H.C. De Silva (1990-2018), Sub-fonds (ESC1) Embilipitiya Disappeared Students’ Parents Organisation (EDSCPO) Fonds, 2022, P. 22.

the disappeared reveals a sharp divide of how justice is conceived. For many of the families of the missing and disappeared, the pursuit of justice necessarily involves the accounting of the whereabouts and fate of these individuals. In instances where the disappeared have been killed, families want to know how they were killed, by whom and what happened to their remains. As such, the investigation of unmarked gravesites can reveal critical answers to these questions. Thus, the failure to identify the victims in unmarked grave sites impacts the many thousands of families of the missing and disappeared in Sri Lanka. There is no accurate figure for exactly how many Sri Lankans have been disappeared in contexts of large scale violence, especially the 30-year old civil war and the two JVP insurrections of 1971 and 1987-1990 and extra-judicial disappearances by the State. Guesstimates put the figure between 60,000 to a 100,000.<sup>9</sup>

At the outset it is important to note that the search for the missing and disappeared takes many forms, including searching for individuals believed to be alive in public and hidden detention centres. In other instances, the search is for the human remains, and in this unmarked gravesite hold answers. The investigation of unmarked gravesites is a complex task. Hence, the failure to locate human remains and identify individuals may be explained as a result of several challenges, both more general to contexts of mass disappearances (including the difficulties of matching human remains to missing individuals) and specific to the Sri Lankan context. In terms of the latter key factors include limited political will, politicisation of investigative authorities, limited

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<sup>9</sup> Meenakshi Ganguly, 'Families of Sri Lanka's Forcibly Disappeared Denied Justice,' Human Rights Watch, August 25 2021.

domestic capacity to carry out the search, delays in the justice system among others.<sup>10</sup> In this article, I examine one of these factors — the role of the law and justice, particularly the failure to identify human remains as part of the court proceedings and related investigations, as it goes to the heart of how justice is conceptualised in the law and practiced in Sri Lanka. It also speaks to a wider question of justice beyond procedural justice, connecting to public debates around transitional justice and State reform. A point that needs to be acknowledged at the outset is that the justice system at large has for the most part failed on the issue of disappearances.

I first look at why identification at a global level is considered an important practical component in the search for justice of the missing and disappeared. I examine the importance of identification for families of the missing and disappeared and the acknowledgement and realisation of their rights in international law. Using specific cases I go on to assess the legacy of unmarked grave sites pertaining to disappearances and missing that took place in the context of or in relation to conflict and large scale violence in Sri Lanka, I use the term ‘unmarked gravesites’ rather than the more commonly used one of mass graves, for two reasons: to date, there is no agreed upon international legal definition of what constitutes a mass grave and to reflect ground

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10 Preliminary observations of the UN Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015), November 2015; Sri Lanka Campaign, ‘Continuing Crimes of Disappearance in Sri Lanka,’ August 30 2021.

realities in Sri Lanka.<sup>11</sup> It is largely a legacy of failure where the vast volume of unmarked gravesites pertaining to disappearances have not been successfully investigated to reveal the identities of victims. In recent years, there have been landmark developments with the introduction of new laws and a disappearance-focused permanent institution — the Office on Missing Persons (OMP), keeping pace with international developments in the search. I look at the current impasse in justice, arguing that there needs to be an acknowledgement of the gap in terms of processes and capacities to ensure identification. This would enable an evolution in law and practice, else there can be no substantive progress in the search and identification of missing persons.

### **Locating Remains, Identifying the Missing**

It may be useful to first discuss the critical role that bodies, or to be accurate human remains and related evidence, of missing persons, play in the resolution of disappearance cases, before discussing the growing recognition of the needs and rights of families of the missing and disappeared, and peculiarities of the Sri Lankan context. A successful investigation of a disappearance

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11 In Sri Lanka, many of the sites that have been recently discovered would not necessarily constitute a mass grave as the remains are only of one or two individuals. The working definition that I use covers “either a clandestine site where human remains have been buried, submerged or scattered on the surface and/or where the exact identities of those buried is unknown. In most such sites the circumstances of death and/or the method of burial are unclear and need to be investigated. This definition could cover sites pertaining to persons killed in the conflict, individual violations by state actors, crimes by non-state actors, and natural disasters.” (Mirak Raheem, Proposal for Developing Standard Operating Procedures (SOP) on Investigating Unmarked Gravesites, October 2021). This definition is an adaptation of that used in Note by the Secretary General, ‘Extrajudicial, summary or arbitrary Executions,’ A/75/384, 12 October 2020, p.5 and The Bournemouth Protocol on Mass Graves, January 2021, p.4.

involves accounting for the body, which is enshrined in the legal concept of habeas corpus. The term literally translates to ‘let you have the body’ which in an ‘ordinary’ judicial context is understood to mean to physically produce the person before the court. Judicial proceedings of and investigations into disappearances, are carried out by the police and other such authorities through inquiries with family members, witnesses and alleged perpetrators. This is coupled with analysis of witness statements, video records, phone signals, satellite images and other such records, which may reveal important evidence to help understand the chain of events and the perpetrators responsible for the abduction, detention and even the fate of the disappeared. However, locating the whereabouts of human remains and carrying out investigations with regards to these remains are crucial to resolving the question of the fate of the disappeared. The remains can be used to establish with certainty the identity of the victims and provide the critical evidence to ascertain the cause and date of death, circumstances relating to the burial and even death and potential perpetrators, which could be corroborated with eyewitness accounts and circumstantial evidence.

During the last two decades the pursuit of truth by families of the disappeared to ascertain what happened to their loved ones has gained international recognition<sup>12</sup> and has been

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12 As noted by the UN Working Group on Enforced or Involuntary Disappearances the right to truth as autonomous and not dependent on other rights has also been acknowledged by various international and regional bodies. ([https://www.ohchr.org/Documents/Issues/Disappearances/GC-right\\_to\\_the\\_truth.pdf](https://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf), p.1-2)

increasingly codified both in international humanitarian law<sup>13</sup> and international human rights law.<sup>14</sup> A critical development in this regard was the development of the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED), which was adopted by the UN General Assembly in December 2006. ICPPED marked an important milestone in the efforts to criminalise the offence of enforced disappearances. Although aspects of the crime, such as illegal detention, are covered under other international treaties,<sup>15</sup> ICPPED not only recognised enforced disappearances as an autonomous offence,<sup>16</sup> but also obliged States to search for the missing, locate and release those alive and to locate, identify and return the remains of those who had been killed.<sup>17</sup>

Disappearances are a unique and grave crime and are distinctive in their impact on families, communities, and wider society. The successful identification of human remains in relation to disappeared individuals can prove important, particularly for societies impacted by large-scale violence and mass disappearances. The identification and handing over of remains allow families to carry out religious and cultural rites associated with death. This can also help communities affected by large-scale human rights violations and tragedies to acknowledge

13 Article 32, Protocol 1, Geneva Conventions.

14 “Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.” (International Convention for the Protection of All Persons from Enforced Disappearances, Article 24)

15 International Committee of Jurists, No More “Missing Persons”: The Criminalisation of Enforced Disappearances in South Asia, August 2017, p.12.

16 *ibid* p.13.

17 ICPPED, Article 24.

and address harms suffered. Thus, this process can also assist divided societies in their efforts to come to terms with violent, horrific pasts. It is for this reason that addressing the issue of disappearances has become a dominant issue in memorialisation, truth telling, reparations and justice and/or as a standalone issue in different transitional justice processes.<sup>18</sup>

For many families, locating the remains of their loved ones serves a critical humanitarian and emotional need. It is difficult to truly imagine the unresolved grief and confusion that families find themselves in when their loved one has been disappeared. The concept ‘ambiguous loss’ is used to capture the complicated emotional and psychological situation that families find themselves in, and where there is no clarity on the fate making it difficult, if not impossible to come to terms with their loss.<sup>19</sup> “Without bodies and funerals, relatives of the missing often are unable to visuali[s]e the death of their loves ones and accept it as real...”<sup>20</sup> As they lack definitive information, family members hold on to the hope of their family member being alive. Family members may struggle to cope with their situation and may undergo distress, anxiety or even trauma. “Families of the disappeared are suspended in a ‘no-man’s-land’ of psychological and spiritual existence. This is compounded by a perceived lack of justice, as none has been administered to those responsible

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18 International Centre for Transitional Justice, ‘Justice for the Disappeared is at the heart of transitional justice,’ August 8 2018.

19 The term coined by Pauline Bass, *Ambiguous Loss, Learning to Live with Unresolved Grief*, 1999.

20 Eric Stover, William D. Haglund and Margaret Samuels, ‘Exhumations of Mass Graves in Iraq, Considerations for Forensic Investigations, Humanitarian Needs and the Demands of Justice,’ *The Journal of American Medical Association*, August 13 2003, Volume 290, Number 6, p.664



for the disappearance (and hence unknown status) of their loved one(s)".<sup>21</sup> Thus, ascertaining the truth and identifying bodies can play a central role for families to emotionally and psychologically come to terms.

An issue with regards to unmarked gravesites in Sri Lanka is the relative silence on mass graves from families of the missing and disappeared. Sometimes this silence is conflated by political actors with a lack of interest in the truth and claims that the key concern of families is in compensation. This representation is both overtly simplistic and disingenuous. The reports of the Consultation Task Force on Reconciliation Mechanisms (CTF) set up by the Government of Sri Lanka in 2016 to ascertain the public's views on transitional justice measures, where families of the missing and disappeared formed a sizeable proportion of those who came forward to make submissions, amply demonstrate the broad range of demands, spanning from accountability for disappearances to compensation to families and non-recurrence.<sup>22</sup>

Nonetheless, it should be noted that very few spoke of unmarked gravesites or related investigation and forensic work during the consultation process.<sup>23</sup> There are multiple explanations

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21 Mary Ellen Keough, Tai Simmons and Margaret Samuels, 'Missing Persons in Post-Conflict Setting, Best practices for integrating psychosocial and scientific approaches,' *Journal for the Royal Society for the Promotion of Health*, 2004, 124(6), p.271.

22 Consultation Task Force on Reconciliation Mechanisms (CTF), Interim Report, The Office on Missing Persons Bill and Issues Concerning the Missing, Disappeared and Surrendered, August 2016.

23 A few representatives of families and organisations of the disappeared did make some recommendations on how the search process, including excavations and exhumations should be strengthened. (CTF Report, ADD).

for this. A primary reason is that the search was most often spoken about in terms of finding their loved ones alive in secret detention centres or abroad. This position was not unique to more recent victims from the last stages of the war,<sup>24</sup> but also included families from the Southern Insurrection (1987-1990) and the Missing in Action.<sup>25</sup> This hope among families was also reflected in the needs assessment carried out by ICRC in 2014. Among the 334 families surveyed the ICRC found that 31% still believe that their missing family member is alive while a further 33% are uncertain if their missing member is alive or dead.<sup>26</sup>

Secondly, as noted earlier conversations relating to unmarked gravesites with families of the disappeared in Sri Lanka can prove contentious and traumatic. Even talking about engaging in a mass grave investigation, can feel like abandonment. In this context, there has been little work done by civil society to create space for this conversation, outside of legal interventions. Thirdly, it appears that victims have re-prioritised their demands based on their assessment of what the State can and is likely to do, hence their position is conditional on the behaviour of the State or significant developments such as the discovery of an unmarked gravesite. In this regard the number of families who came forward seeking legal representation to be intervening parties in the Matale Mass Grave in 2012-3<sup>27</sup> should alert us all to the dangers of over-simplifying victim positions.

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24 CTF Report, 2016, p.217

25 CTF Report, 2016, p.217

26 Only 36% believe that the missing person is dead. (ICRC, 'Living with Uncertainty, Needs of the Families of Missing Persons,' 2014),

27 Steve Finch, 'In Sri Lanka will mass grave be buried,' *The Diplomat*, July 13 2013.

## **Finding the Missing through Judicial Processes**

In this section, I explore the legacy of unmarked gravesite investigations in Sri Lanka. For the most part, it represents a failure by the State to provide answers to the families of the missing and disappeared about the exact fate of their loved ones and to identify their remains. While highlighting the lack of forensic capacity to deal with unmarked gravesites and other contextual challenges, I argue that the justice system, particularly in terms of how it is currently practiced thwarts effective outcomes.

At the outset, it is important to note that besides the serious failure in terms of identification, the justice system has fared poorly in dealing with mass disappearances in general. A key legal device used in Sri Lanka for disappearances are habeas corpus applications. These cases are filed in the Court of Appeal or Provincial High Court, which directs a Magistrate's Court to conduct inquiries in this regard. Its use as an effective legal remedy has come into serious question in recent decades. In an extensive study Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne surveyed 880 judgements from habeas corpus applications from pre-independence times up to 2002.<sup>28</sup> As a review of the study noted "habeas corpus as a judicial remedy for the protection of the freedom of the individual has failed in Sri Lanka, and as the title of the Study suggests, this important writ may disappear altogether from the country. This failure is not due only to factors such as scandalous and shocking

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28 "Liberty Rights at Stake: The Virtual Eclipse of the Habeas Corpus Remedy in Respect of Enforced Disappearances in Sri Lanka," The Law & Society Trust, 2011.

delays, but also due to much more important changes of attitudes on the part of lawyers and judges (effectively the legal community) towards the remedy itself”.<sup>29</sup> The study posits that there has been a significant erosion in the Judiciary’s approach from the pre-independence period in protecting the individual from the State. With the State’s repeated use of disappearances as a tool of counter insurgency and repression, the Judiciary in turn proved unwilling to challenge other arms of the State.<sup>30</sup>

Currently, there are several ongoing high profile disappearance cases before the judicial system, two of which, the Prageeth Ekneligoda Case and the ‘Navy 11’ Case were taken up by a Trial-at-Bar.<sup>31</sup> During the magisterial inquiries, which spanned close to a decade, there was critical evidence presented in each case with regards to the fate of the disappeared individuals. However, with the cases being transferred to a higher court, the process of inquiry effectively starts anew in a dramatically altered context. Following the election of President Gotabaya Rajapaksa, lead investigators and agency heads had to flee the country and were persecuted.<sup>32</sup> Thus, overall, the use of judicial avenues for identification are in practice seriously limited.

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29 <http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2011/>

30 <http://www.humanrights.asia/news/ahrc-news/AHRC-PAP-001-2011/>

31 Amnesty International, Sri Lanka: Still No Answers, March 1 2022,

32 United Nations Office of the High Commissioner for Human Rights, ‘Promoting reconciliation, accountability and human rights, Report of the High Commissioner for Human Rights’ 27 January 2021, page 8, para 28; Amnesty International, ‘Sri Lanka: Authorities falter on Accountability in ‘Navy 11 case,’ August 4 2021; Al Jazeera, ‘Top detective who investigated high profile cases flees Sri Lanka,’ November 26 2019.

The fate of the Sooriyakanda unmarked gravesite speaks to the troubled history of investigations of unmarked gravesite investigations in Sri Lanka. In discussions and articles about the Embilipitiya Case,<sup>33</sup> it is not unusual to hear reference to the Sooriyakanda site, which is located roughly 40 km away from Embilipitiya.<sup>34</sup> The Wikipedia page on the latter case begins with the definitive statement “The Sooriyakanda mass grave is the mass burial ground of murdered school children from Embilipitiya Maha Vidyalaya (Embilipitiya High School) in Sri Lanka”.<sup>35</sup> This is, however, contested and it is speculated that the remains may be located in a teak forest near Uda Walawe.<sup>36</sup> Nonetheless, as affected family members point out no effort has been made by successive Governments or State institutions, including the Office on Missing Persons (OMP), to investigate these claims.<sup>37</sup>

Sooriyakanda marked an important moment in gravesite investigations: “Notably, this was the first time in the country’s history that a mass grave was to be disinterred”.<sup>38</sup>

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33 Some articles discuss the possibility of the bodies of the Embilipitiya school boys being buried there (e.g. Bala, p.258).

34 The site atop a hill used for telecommunication and television towers was revealed by a secret tip off that resulted in opposition and television towers was revealed by a secret tip off that resulted in opposition and television towers visiting the site in January 1994 and locating human remains. A magisterial inquiry was initiated at the Embilipitiya Magistrates’ Court and senior Judicial Medical Officers were involved in the case.

35 [https://en.wikipedia.org/wiki/Sooriyakanda\\_mass\\_grave](https://en.wikipedia.org/wiki/Sooriyakanda_mass_grave), accessed February 1 2022.

36 Historical Dialogue and Memory Culture, Records of the Secretary S.H.C. De Silva (1990-2018), Sub-fonds (ESC1) 2022, P. 18.

37 I served as one of the seven members of the Office on Missing Persons (2018-2021).

38 <https://www.sundayobserver.lk/2018/11/04/news-features/sooriyakanda-gruesome-and-forlorn-grave>

The investigations, however, rapidly unraveled as the site was inundated by droves of people, including family members who began to dig on their own without following systematic and scientific approach to excavations and exhumations: “Skeletal remains were stacked up around the grave while the clothes found on the bodies were separated as well... Visitors to the grave took part in the excavations, others were seen hugging the excavated skeletal remains and crying. Some were found to have taken remains home without the knowledge of the officials”.<sup>39</sup> The JMOs reportedly halted their investigations, and the remains were not identified, the present location of the multiple skeletons are not known. The failed outcome of the Sooriyakanda Case is by no means unique. In fact, most of the emblematic unmarked gravesite cases also remain unresolved. In the majority of unidentified gravesites, the human remains have not been positively identified. Furthermore, in some instances, such as the Matala or Mannar Sathosa Gravesites, even more basic facts such as the date of the site, specifically whether the remains are from the modern period or from preceding decades or even centuries remain contested.<sup>40</sup>

In one of the most insightful articles to date on unmarked gravesite investigations in Sri Lanka, Mytili Bala evaluates the investigations into some of the most high-profile cases, pointing to the systemic failure to provide answers to the families of the missing. Bala claims that the only two high-profile historic

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39 <https://www.sundayobserver.lk/2018/11/04/news-features/sooriyakanda-gruesome-and-forlorn-grave>

40 The Matala site is discussed later in the chapter, the Mannar Sathosa case relates to the discovery of human remains of over 300 individuals in Mannar Town in 2018.

graves sites that were investigated, Chenmani and Sooriyakanda, were both undertaken after significant political pressure, but that neither “left families of the disappeared closer to the truth”.<sup>41</sup> She then looks at three cases that were ongoing when she was writing: Matale (inquiry initiated in 2012), Mannar-Thiruketheeswaran (2013) and Kalawanchikudy (2014) pointing to different challenges that result in the paralysis of investigations at different points.<sup>42</sup> Her broad evaluation is that cases failed to uncover the truth due to the lack of a coherent approach, as it was left to the discretion of each Magistrate. Furthermore, she draws attention to the impact of the politicisation of the inquiry and investigations systems, political pressures and limitations in technical capacity.<sup>43</sup>

While agreeing with her overall assessment, it is important to note that Chenmani is a positive exception, at least partially. It should be noted at the outset that Chenmani graves are used as shorthand but pertain to different cases. The first case pertains to the gang rape and murder of a school girl, Krishanthi Kumaraswamy, by members of the Sri Lanka armed forces in Jaffna in 1996. The details of her killing came to light following the investigations into the disappearance of her family members, a neighbour and herself.<sup>44</sup> Through the investigations, which took place rapidly as a result of the high profile of the case

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41 Mytili Bala, ‘Transitional Justice and the Right to Know: Investigating Mass Graves,’ in Bhavani Fonseka (Ed), *Transitional Justice in Sri Lanka, Moving Beyond Promises*, Centre for Policy Alternatives, 2017, p.257.

42 The book was published in 2017.

43 Bala, 2017, pp.268-70.

44 <https://groundviews.org/2016/09/01/the-krishanthi-rape-and-four-murders/>

and political interest, the site of disposal was identified, and the bodies were exhumed within three months of the incident. This case is exceptional as the four bodies were identified, using the dhobi marks on their clothes and circumstantial evidence.<sup>45</sup> This case also highlights the importance of non-DNA techniques that can be used for identification. During the trial, one of the accused claimed that there were other graves, which resulted in another case. A curious and disturbing aspect of this later case is that at least 15 bodies were discovered across a number of gravesites in Chenmani, but it is unclear that there were any positive identifications. As Bala notes “Bones samples were sent for DNA testing in the early 2000s, first to India and then to the U.K., but the local case ends there, and the results of DNA testing are unknown”.<sup>46</sup>

### **Challenges with Approaches to Justice and Investigation**

As highlighted by Bala there are several contextual factors in Sri Lanka that have contributed to this legacy of failure, including the lack of a systematic approach, capacity and political will. Building on this argument, I would also suggest that this is also a consequence of how justice operates in Sri Lanka, as there is also a fundamental problem in how the issue of identification is conceptualised in law, and its implications for the praxis. Currently in Sri Lanka, unmarked gravesite investigations take place through a judicial process. Unmarked gravesites are found in two ways: (i) accidentally when persons unearth a site while carrying out construction, farming, demining or any such activity;

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45 Interview with Prashanthi Mahindaratne. See also [https://www.india-seminar.com/2017/700/700\\_interview\\_prashanthi\\_m.htm](https://www.india-seminar.com/2017/700/700_interview_prashanthi_m.htm)

46 Bala, 2017, p.260.



or (ii) when a witness or perpetrator provides information about the location of an unmarked gravesite. Following the discovery of unmarked gravesites, investigations are often conducted by a Magistrate under Section 370 of the Code of Criminal Procedure, usually as inquest proceedings.

It should, however, be noted that not all discoveries have resulted in inquests, as in some cases those who discover the remains may not report the finds to the appropriate officials or conceal the discovery. In some instances where it is reported to the peace officers, they may not report the discovery to the Magistrate.<sup>47</sup> In inquests, the first stage of the inquirer, in most instances the Magistrate,<sup>48</sup> is to focus on the cause of death in order to establish if a crime has been committed.<sup>49</sup> If there is sufficient evidence to prove this the Magistrate may proceed with a non-summary or summary trial.<sup>50</sup> As a result of the court proceedings the case may be taken up by the Attorney General who may file an indictment before the High Court. That all these actions may take place underlines the different stages at which an unmarked gravesite cases may not proceed to the next stage as the law leaves it to the discretion of key

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47 It is a legal obligation for anyone to report the discovery of human remains to a peace officer. The peace officer in turn has to report it to a Magistrate or supervising officer. In specific instances either the first or second action is not taken. It is to address this gap that the OMP issued a recommendation to make it obligatory for state officials (and the public) to report discovering of human remains (OMP Interim Report, October 2018, p.16)

48 It is important to note that the Magistrate in this role serves in a non-judicial capacity (G.A.D.Seneviratne Vs. Attorney-General (1968) 71 NLR 429).

49 Code of Criminal Procedure, Section 3709(i)(c).

50 Code of Criminal Procedure, Section 370(3)

actors. As such, the law prioritises the pursuit of perpetrators, thereby marginalizing the investigation of mass grave cases for the purpose of identification.

Unlike in other jurisdictions, where the investigation into an unmarked gravesite may continue even though the criminal case may not proceed, this is very unlikely in Sri Lanka, and in the rare instances it does so, it is entirely dependent on the persistence and dedication of individual investigators. Thus, the potential to identify human remains in an unmarked grave site is inextricably tied to judicial proceedings. If the judicial proceeding peters out, which could be due to the lack of progress in investigating alleged perpetrators, failure to reconcile the contrasting pieces of evidence and analysis or even obstructions to the case going forward, the case may be laid by, in essence the purgatory of judicial cases.

This appears to be the fate of the Matale case. In November 2012, an unmarked gravesite with more than 154 bodies was discovered during construction work at the Matale General Hospital compound. A report was produced by the main archaeologist called in to assist on the case, Professor Raj Somadeva, who claimed that the site dated “not earlier than the year 1986 and not later than the year 1990”.<sup>51</sup> One of the pieces of evidence he highlighted was a button, which he dated to the 1980s. Somadeva proposed carbon dating of the human remains at Beta Analytics Laboratory in the US. The test results found low levels of Carbon 14 indicating that the person lived

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51 Raj Somadeva, *Human Skeletal Remains Found in the District General Hospital Premises in Matale*, p.46

in a period prior to 1950. Somadeva contested the accuracy of these results alleging contamination and that sample selection was faulty as he was not involved.<sup>52</sup> While the chain of custody was indeed a serious issue,<sup>53</sup> the overall investigation process that was followed was itself problematic.

The limitations in the investigation approach are by no means unique to the Matale case, but are characteristic of the current system for unmarked gravesite investigations in Sri Lanka. There continues to be a reliance on a traditional forensic investigation, more suited to criminal investigations of murder scenes with an individual victim. A multidisciplinary approach for human identification has been developed across different international contexts to deal with situations of mass victims. Unmarked gravesites investigations are highly technical processes requiring distinct skill sets. Specialised forensic skills, especially forensic archaeologists and forensic anthropologists, in addition to DNA specialists play a critical role in the different phases of the unmarked gravesite investigation from grave site identification to excavation and exhumation, to analysis and identification. Sri Lanka lacks trained and experienced professionals in these fields. Currently, we rely on Judicial Medical Officers who are highly qualified and with a wealth of experience in dealing with bodies with human tissue, and archaeologists trained to examine ancient historical sites. Even the College of Forensic Pathologists noted

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52 Darshanie Ratnawalli, 'Matale Mass Grave: Skeletons in Closets As Well,' Colombo Telegraph, December 21 2014.

53 Reportedly "there no chain-of-custody documentation or evidence to prove that the bone sample actually came from the Matale grave" (Bala, 2017, p.261)

the lack of appropriate skills in their submission to the CTF.<sup>54</sup> This has been a long-standing problem and progress has been incremental at best. The Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces in 1997 pointedly noted that “it would be undesirable to disinter mass graves until requisite skills exist” and called for reforms including the establishment of a Human Identification Centre.<sup>55</sup>

It is too simplistic to claim that the current challenge to forensic investigations is merely one of capacity as it is also about investigation approach. Thus, beyond addressing the dearth of specialists, it is important to acknowledge that there needs to be a significant improvement in approach. Reviewing the Matala investigations reveal the gaps in unmarked gravesite investigations. In an ideal scenario an investigation would include a multidisciplinary team who would work in an interdisciplinary manner to integrate their different findings and analyses in order to come up with a comprehensive final report. Although there were elements of a multidisciplinary team (for instance Scene of Crime Officers (SOCO), an archaeologist and a JMO being involved), the investigation lacked the appropriate specialised personnel, including forensic anthropologists and forensic archaeologists. Also, there was no process to arrive at a comprehensive final report, which could have integrated all findings and analyses, and considered contrasting pieces of

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54 CTF Interim Report, 2016, pp26-7.

55 The Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces (Final Report)

evidence and hypotheses. For instance, it is not clear how or even whether the findings of the SOCO team was included in the archaeological report. This report strikingly provided analyses of the skeletal remains. This would in other contexts be undertaken by forensic anthropologists. In this regard there are questions relating to some of the conclusions in the report such as the open position of jaw bones being the result of rigor mortis and an indication of torture,<sup>56</sup> whereas this could be explained as the outcome of the normal process of deterioration where muscles decay and the jaw drops.

Unless there is acknowledgement of this dual problem of capacity and approach, it is difficult to envision how unmarked gravesite investigations can be improved. In the Interim CTF Report, a representative of the College of Forensic Pathologists, while noting the lack of skills, points to a one-year training course as an indication that progress is being made.<sup>57</sup> In reality a one-year training falls short of building a vital discipline in Sri Lanka from scratch. As such foreign technical experts embedded in national processes will have to be a temporary measure that will need to be used until local skills are developed. A precedent already exists in the Chenmani case where the Attorney General signed a memorandum of understanding with three international forensic experts.<sup>58</sup> That is until Sri Lanka develops

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56 Raj Somadeva, Human Skeletal Remains Found in the District General Hospital Premises in Matale, p.38

57 The submission is simplistic in acknowledging the exact gap in expertise and skill base. It claims that JMOs “have all the expertise necessary to handle any type of medico-legal cases including mass grave excavations although foreign expertise may be required to monitor and assist where necessary.” (CTF Interim Report, 2016, p.27)

58 Bala, 2017, p.259.

a strong forensic skill base required for unmarked gravesite investigations.

### **Breakthroughs in the Legal and Institutional Framework**

This limitation in justice processes to address the search is not unique to Sri Lanka, but is seen in other parts of the world. Faced with the phenomena of mass enforced disappearances, particularly those with authoritarian regimes and internal armed conflicts, there have been efforts across different contexts to address this issue. Two such responses include the development of specific laws and institutions focused on disappearances. However, it is important to note that in this sense, Sri Lanka has lagged behind both in terms of legal and institutional reforms, until the Yahapalanaya administration (2015-2019) which passed a number of reforms with respect to good governance, human rights, transitional justice and disappearances.<sup>59</sup>

### **Domesticating International Law:**

As noted earlier, there have been significant developments in international humanitarian and human rights law in the last two decades pertaining to disappearances. For years, both domestic and international actors campaigned for the Sri Lankan State to adopt the ICPPED in order to propel domestic legislation forward and ensure greater State responsibility. In December 2015, the Sri Lanka Government signed up to the ICPPED and ratified it in May 2016.<sup>60</sup> The International Convention for the

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59 United Nations Office of the High Commissioner for Human Rights, 'Promoting reconciliation, accountability and human rights, Report of the High Commissioner for Human Rights' 2019, February 8 2019, pp 4-7.

60 [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN)

Protection of All Persons from Enforced Disappearances Act (ED Act) No. 5 of 2018 marked a significant achievement, as it not only strengthened efforts to ensure greater accountability, but also gave recognition to the right to truth, specifically the right for families to know the fate and the whereabouts of the missing person,<sup>61</sup> return the remains<sup>62</sup> and reinforced the State's obligations to investigate.<sup>63</sup>

While giving domestic effect to international conventions ensures compliance,<sup>64</sup> it can sometimes result in dilution of critical international standards.<sup>65</sup> The provisions of the ED Act imposed a series of limitations, as it did not give full domestic recognition to the ICPPED, which also highlighted more generic problems of law making in Sri Lanka, of not responding to the loopholes of existing laws and lives experiences of the law.<sup>66</sup> These included problematic provisions to limit retroactive applicability of criminal liability,<sup>67</sup> and the non-recognition of

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61 Section 14(1)

62 Section 14(4).

63 Section 14(3) and 14(4).

64 For instance the ED Act included not only non-state actors acting on behalf of or with the authorisation of the state but not also others with no affiliation to the state as potential perpetrators (Section 3(1) and 3(2)).

65 Geneva Conventions

66 This included the failure to give full recognition of the seriousness of the crimes, both in setting out the maximum punishment (20 years) and the lack of reference to it as a crime against humanity. See South Asia Centre for Legal Studies (SACLS), "Commentary on the Bill Titled International Convention for the Protection of All Persons from Enforced Disappearances," May 2017 for a commentary on the bill and its implications. See also CPA's overview "Basic Guide to the International Protection of All Persons from Enforced Disappearances Bill," May 2017.

67 In Article 13(6) the Act sets a bar on trying cases prior to the passage of the law even though disappearances are a continuing violation in the Declaration (Article 17.1), and the Sri Lankan Constitution recognises the exception of retroactive criminal liability for acts considered as crimes under

different elements that constitute the complex crime that is an enforced disappearance.<sup>68</sup> Furthermore, it did not give explicit recognition and empower the recently established institution set up to conduct the search, the Office on Missing Persons, and did not put it on par with the Human Rights Commission, which was specifically referenced in the Act.<sup>69</sup> Five years after the passage of the law, we have yet to see it being used widely in judgements, despite petitions specifically referring to it.<sup>70</sup>

### **Institutions Dedicated to the Search:**

A significant global development in the last thirty years with regards to the search for the disappeared has been the emergence of specialised institutions tasked with carrying out investigations, particularly to deal with human remains in unmarked grave sites. In this regard Latin America has emerged as the pioneer with the establishment of several nongovernmental organisations with forensic specialisation.<sup>71</sup> Other regions saw different models

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international law (Article 13(6)). (See SACLs, pp22-23).

68 ICPPED sets out the crimes of enforced disappearances and state responsibilities but it is incumbent on the state to define the crime in domestic law, and to set penalties. The Act, however did not recognise that disappearances are a composite crime, thereby ignoring the specificity of disappearances involving different elements and multiple perpetrators, thereby limiting the modes of liability. (See SACLs, pp4-19)

69 See International Convention for the Protection of All Person from Enforced Disappearances Act No 5 of 2016, 15(3) and 20(3).

70 A fundamental rights petition (SC/FR 266/2022) was filed into relation to the manner in which persons accused by the State of being involved in the Aragalaya were taken into detention (The Island, 'Claiming 'enforced disappearances' related to Aragalaya: Ex-HRC and OMP officials file FR petition,' August 11 2022).

71 Including Equipo Argentino de Antropología Forense (EAAF) in Argentina, Equipo Peruano de Antropología Forense (EPAF) in Peru and Fundación de Antropología Forense de Guatemala (FAFG) in Guatemala.



such as entities with multi-country collaborations in Europe.<sup>72</sup> In more recent years, governments attempting to address large-scale disappearances have created State bodies to specifically address this issue, including in South Africa, Colombia, Mexico, El Salvador, Nepal, Timor Leste and Sri Lanka.

In May 2016, the Sri Lankan Government presented the ‘Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016’ Bill before Parliament. Under the relevant Act passed in August the same year, the OMP was created as a permanent state institution to focus on issues relating to the missing and disappeared in Sri Lanka resulting from conflicts, political disturbances and enforced disappearances.<sup>73</sup> The mandate was extensive, but included a specific reference to tracing the whereabouts of the missing.<sup>74</sup> As noted by then Foreign Minister Mangala Samaraweera in his speech at the UN Human Rights Council in Geneva when unveiling the proposal: *“an Office on Missing Persons based on the principle of the families right to know, [is] to be set up by Statute with expertise from the ICRC, and in line with internationally accepted standards”*.<sup>75</sup>

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<sup>72</sup> A multilateral model, the Committee for Missing Persons was established in Cyprus in 1981 to work on the missing in the divided island. In the former Yugoslavia there were several initiatives to carry out unmarked gravesite investigations for accountability and later for the purpose of identification, including the multilateral organisation, the International Centre for Missing Persons (ICMP), and national entities, such as the Bosnian Centre for Missing Persons and Office of Missing Persons and Forensics (OMPF).

<sup>73</sup> OMP Act 2016,27.

<sup>74</sup> “To search for and trace missing persons and identify appropriate mechanisms for the same and to clarify the circumstances in which such persons went missing.” (OMP Act, 2016, 10(1)(a).

<sup>75</sup> Statement by Mangala Samaraweera, 30th Session of the UNHRC, Geneva, 14 September 2015

For human rights groups and a significant section of families, the creation of this institution represented a critical step by the State both in terms of recognition and redress. Over previous decades successive Governments had appointed a series of presidential commissions of inquiry and committees, some of which had made important contributions in terms of the recommendations for acknowledgement, compensation and other forms of assistance, justice and non-recurrence. However, these temporary and ad hoc mechanisms were unable to provide truth to the many thousands of the disappeared. The announcement of the OMP Bill was, however, heavily critiqued by different sections of the polity, ranging from Tamil families of the disappeared who felt that this was yet another smokescreen to thwart the search for truth and justice<sup>76</sup> to Sinhala chauvinists who falsely claimed it was an accountability mechanism.<sup>77</sup> The OMP Bill was enacted in parallel to the CTF consultation process but did not reflect some of the key suggestions made by families, including in relation to the very name of the institution.<sup>78</sup> While the OMP Act laid out several critical powers to empower the new institution, as outlined below, it also set out specific limitations on the OMP's capacity to carry out the search.

Nonetheless, these two developments represented significant milestones in the advancement of the search in Sri Lanka. Along with the legal recognition of the missing through the

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76 CTF, Interim Report, August 2016, Page 1.

77 Shivanthi Ranasinghe 'Bill to set up OMP A draconian law,' Ceylon Today, July 28 2016.

78 CTF, Final Report of the Consultation Task Force on Reconciliation Mechanisms, Volume 1, Annex 15, November 2016, pp.474-489.

Certificate of Absence (COA), these laws helped provide greater recognition for the disappeared and the rights of their families.<sup>79</sup>

### **Plus ça Change, Plus c'est la Môme Chose**

For families of the disappeared, the OMP has proved a disappointment at different levels, particularly for those families urgently waiting for answers as to what happened to their loved ones. Some five years after its establishment, there needs to be serious stock taking as to the purpose of the OMP, especially with regards to the search, else it risks being made redundant.<sup>80</sup> Thus, it appears that there is an impasse. This section looks at key reasons for this both within the OMP and in the wider system of justice, and ways out of this deadlock.

In February 2018, seven individuals, including myself, were appointed to the OMP as commissioners and took on the task of operationalising the mandate of the OMP. During a three-year term, the OMP undertook a number of critical tasks, including the development of an interim list of missing and disappeared in Sri Lanka<sup>81</sup> the introduction of ‘interim relief’ for families<sup>82</sup> and became actively involved in five unmarked

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79 The COA was introduced through the Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016

The COA can be granted in lieu of death certificates where the fate of missing individuals is unclear, providing legal recognition to missing persons and specific, limited rights of families.

80 The three-year term of the first set of commissioners expired in 2021.

81 OMP Annual Report, 2020, Page 16-24.

82 The OMP recommended Rs 6,000 interim relief for families of the missing and disappeared who were facing economic difficulties (OMP, Interim Report, 2018, para 35), which the then Government agreed to implement. By October 2019 153 families were receiving the relief but this was suspended by the Government under President Gotabaya Rajapakse from November 2019 (OMP Report, Annual Report, 2020, para 2.20-2.26).

gravesite cases before different Magistrate’s Courts.<sup>83</sup> The OMP, however, proved unable to make a breakthrough in identifications. There were a number of challenges facing the OMP (and that continue), including limitations in hiring staff, and, most critically, the lack of an investigation unit with experienced and qualified personnel.<sup>84</sup> While the OMP between 2021 and 2022 has intervened in an additional 8 cases, besides the pre-existing 5 cases, and has set up a number of panels of inquiries.<sup>85</sup> It is by no means clear that besides granting interim reports recommending COAs or certificates of death, that there are ongoing inquiries exclusively focused on the task of tracing the missing.

In examining the role of the OMP, it is important to reflect on how the institution was envisaged as per its founding Act. Mapping out the process of unmarked gravesite investigations in the law reveals a critical gap. The OMP has the authority to apply to a Magistrate’s Court for an order for the Court to carry out an excavation and/or exhumation of suspected gravesites, and to act as an observer at such excavation or exhumation, and at other proceedings, pursuant to the same.<sup>86</sup> The Act does not, however, specify the OMP’s role in unmarked gravesite investigations beyond observation nor does it specifically empower the OMP to take on the responsibility of identification. The only explicit reference to identification in the Act is for the OMP to make recommendations with regards

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83 See also OMP Annual Report 2020, para 3.4.

84 See also OMP, Strategic Roadmap 2023-2025

85 In 2022 the OMP carried out a total of 2110 inquiries.

86 Article 12(d).

to the ‘handling of’ remains.<sup>87</sup> In this regard, it could be argued that there is a lack of specificity and at best ambiguity in this area. According to one of the drafters of the law, Prashanthi Mahindaratne, this ambiguity was intentional, in order to allow the OMP to “creatively interpret its role” using far-reaching powers as per the OMP Act.<sup>88</sup> In order to enable the OMP to conduct the search it was equipped with a number of critical powers, including to procure documents and statements, to summon, and to carry out on site investigations of suspected detention sites without a warrant.<sup>89</sup> Creating an institution that could take on the sole responsibility of conducting the search was seen as too difficult as it would require an amendment to the Code of Criminal Procedure.<sup>90</sup> As such the OMP’s main role as envisaged would be to follow up with State actors and to make recommendations. As such the OMP was designed as a primarily humanitarian mechanism, with a responsibility to report crimes that it discovers to the relevant state authorities.<sup>91</sup>

When it comes to unmarked gravesites the OMP would, however, have to yield to the existing justice and investigation system and play the role of an observer. Although the OMP was granted significant powers,<sup>92</sup> had the Act provided an explicit responsibility to identify (thereby granting it a distinct responsibility in the gravesite investigation) the OMP’s bargaining hand would have been strengthened, particularly as it has to

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87 Article 13(1)(k)(iii).

88 Interview with Prashanthi Mahindaratne.

89 See OMP Act Section 12 and 10(f).

90 Op cit

91 See Vishakha Wijenayake, ‘The Office on Missing Persons in Sri Lanka: The Importance of a primarily humanitarian mandate,’ *International Review of the Red Cross*, 2017, pp.641-662.

92 See OMP Act, 10(f).

negotiate its right to participate with well-established entities in the medico-legal and judicial sectors. Furthermore, it needs to be recognised that the OMP Act does nothing to fundamentally offset the legacy of failure to investigate unmarked gravesites under the current justice system besides adding the OMP as a new player (with specific but limited powers). Essentially the OMP Act guides the OMP back into the flawed system.

### **Vital Changes in the OMP and Beyond**

It cannot be denied that having a permanent State institution tasked with the search and with significant powers to investigate and follow up can play a pivotal role in addressing the issue of disappearances in Sri Lanka. However, in order to realise this ambition, there needs to be a dramatic shift within the OMP. This change can take two main forms: (i) internal capacity and (ii) an assertion of mandate.

With regards to the first, during the CTF process, a number of submissions drew attention to the potential role that the OMP could play in excavations and exhumations; they highlighted the need for forensic staff, international technical forensic assistance, training and staff, and even suggested the establishment of a special forensic unit.<sup>93</sup> Without a solid investigation team that includes forensic capacity, specifically forensic anthropology and forensic archaeology, the OMP cannot be expected to make substantive positive interventions in unmarked gravesite cases. This capacity would enable the OMP to not only provide guidance on how investigations could proceed, but to become

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93 Interim Report, p. 27.

part of the investigation team. This capacity in turn will provide OMP greater leverage within the State system. In the short-term this will require having foreign experts until in-country capacity is developed. In other institutions, such as South Africa's Missing Persons Team, an international forensic anthropologist experienced in gravesite investigations was integrated into the team.

In order to make a contribution, however, the OMP needs to assert its mandate and create a role for itself. During its first three years, the OMP interpreted its role of 'observer' broadly so as to proactively assist the courts and the overall investigation process. In the Mannar Sathosa Case, which marked a breakthrough for the OMP, it was able to establish a precedent in terms of becoming party to an unmarked gravesite case and define its role as observer. The OMP did not merely observe the legal proceedings and at the excavation site (for instance at key stages of the investigation process such as observing the extraction of samples for testing), but also provided financial support (including for carbon dating remains) and made recommendations to the Court (for instance to ensure civil society representation and media access).<sup>94</sup> This precedent provided the OMP the basis to intervene in other such cases. The OMP was also respondent to a case relating to the right of families to be represented in unmarked gravesite cases where it supported this right.<sup>95</sup> On February 22 2022, the Vavuniya High Court ruled in favour of the lawyers defending the right

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94 OMP Annual Report, 2018, pp 13-14.

95 OMP Annual Report, 2020. P.16.

of families to intervene in the Mannar Sathosa Case.<sup>96</sup> Carving out a role for itself in an entrenched criminal justice system with powerful, well-established actors was itself a notable achievement.

The OMP needs to build on this track record so as to ensure its findings can be used by other investigators and that its investigators can directly assist, including in the scenario where it has forensic capacity with skills. In addition to protecting the rights and interests of families in such cases, and incrementally building trust with the families and civil society. The access to families of the missing and disappeared is a key resource that the OMP needs to utilise in order to assist in investigations. As noted, earlier families provide vital information, whether it be DNA reference samples or physical identifying marks of the missing persons and such ante mortem information. Beyond this utility, they represent the most important stakeholders for the OMP and as right holders can act as a vital ally to the OMP. The OMP for its part has to ensure that it assists families secure their right to participate in investigations.

Given the architecture of the current legal system, including the OMP Act, and the overlapping responsibilities and functions of other actors it is all too evident that the OMP cannot conduct the search alone. Thus, it is all too apparent that there is a need for larger and targeted reforms to address this current problem. This was noted in the CTF's Interim Report "unless the existing

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96 Vavuniya High Court Case Number HCV/REV/327/20. See article by Aruni Jayakody, 'Uncovering the Secrets of Mass Graves,' Groundviews, March 15 2022.



legal and judicial system is adequately resourced and reformed, the OMP law as it is currently envisaged will not be able to deal with investigations of this nature<sup>97</sup>.<sup>97</sup> In an ideal scenario boosting OMP's forensic capacity should trigger a development among other sectors as JMOs and archaeologists, with parallel efforts in universities so that in 5-10 years Sri Lanka will see a generation of forensic specialists.

A significant step towards addressing the current impasse is to acknowledge that there is a problem with the current legal system and framework for medico-legal investigations. Arguably, there is some recognition of the need for specific reforms. Two such examples include the development of a standard operating procedure for unmarked gravesites devised by the College of Forensic Pathologists<sup>98</sup> and the draft Inquest Law, which involved extensive consultations within the State to develop draft legislation to handle the dead from different contexts.<sup>99</sup> These measures are both symbolically and substantively important in themselves, and they are steps towards addressing the gap.

The reforms that are required in law and practice may seem too ambitious, particularly given that it is multi-sectoral and challenges the working assumptions of key institutions like the judiciary and JMOs. Reform can and has to take place at multiple levels and the OMP can play a role in bringing about incremental change. In 2020, the OMP advocated the sitting Magistrate

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97 CTF, Interim Report, 2016, p.25.

98 College of Forensic Pathologists of Sri Lanka, 'Standard Operational Procedures for Investigations of Mass Graves in Sri Lanka,' [No Date].

99 Mirak Raheem, 'Unidentified bodies: The Case for Dignity and Reform,' The Sunday Times, August 21 2022.

in two unmarked gravesite cases to use investigation team meetings. Such meetings can be used to bring key investigating parties to the table (including lawyers representing families) and to discuss the status of investigations and ways forward, rather than the standard inquiries in court which does not provide a space for all key investigators to be represented and for findings and potential next steps to be debated. Furthermore, the OMP wrote to the Judicial Service Commission requesting that it issue a circular to all Magistrates to take a number of measures to provide for investigation team meetings, to ensure a multidisciplinary approach, to maintain chain of custody, and to developing comprehensive reports.<sup>100</sup> Thus, while pushing for reform at a national level,<sup>101</sup> the OMP also needs to advocate and bring about changes through praxis in the different cases that it is involved in.

### **Conclusion: Reconciling Justice and the Search**

A key debate about the OMP from the moment it was announced was whether it would enable or thwart justice.<sup>102</sup> While in its design it is clear it is not a justice-oriented mechanism, its role in supporting and enabling accountability will lie in how the institution marks out its role and uses the responsibility found in its mandate. As explained in the above section, the OMP has to largely function within the justice system in terms of gravesite investigations, the challenge lies in whether it can reinvent itself to be an active participant in the efforts to find justice and enable

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100 OMP Annual Report, 2020, paras 2.49-2.54.

101 For instance see OMP Interim Report, August 2018.

102 See Isabelle Lassez; 'The Sri Lankan Office on Missing Persons: Truth and justice in tandem?', *International Review of the Red Cross*, 2017pp619-640; Vishakha Wijenayake, 2017, pp.641-662.

the search, which need not be mutually exclusive.

Across the globe there are multiple institutions working exclusively on the search, some State entities and other civil society forensic organisations, that have over the years been able to build up a skills base, carve out an institutional space within the State and engage organisations and families' associations of the disappeared. This can be achieved without undermining the pursuit of justice, as seen with examples such as the Guatemalan Forensic Anthropology Foundation (FAFG), which undertakes grave site investigations independently, but assists Judicial processes, including to provide expert witness testimony for prosecutions.<sup>103</sup> As argued by Isabelle Lassee “the OMP Act itself does not prevent the OMP from contributing to criminal investigations, in practice this may pose a number of challenges”,<sup>104</sup> specifically in how the mandate is interpreted. She notes in her recommendations that both the OMP's own rules and internal arrangements, and the operational relationships it would need to build with the prosecuting authorities, will prove decisive in this regard.<sup>105</sup>

2023 marked 6 years since different groups of families of the missing and disappeared in the North and East launched a continuous protest in multiple locations. They are demanding answers and justice from the State and the international community. For the OMP, the choice is stark: it either needs to

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103 Victoria Sanford, 'The 'grey zone' of justice: NGOs and rule of law in post war Guatemala,' *Journal of Human Rights*, 2003, 2:3, pp.393-405.

104 Isabelle Lassee, 2017, pp.629.

105 *ibid*, pp. 629-638.

start developing its forensic capacity and expanding its functions to become more actively involved in unmarked gravesite investigations or surrender this role to another actor, including potentially a civil society entity like in other contexts. If neither scenario takes place soon, there can be no substantive domestic response to the calls for an international mechanism to address the search for the disappeared in Sri Lanka.



## Case Notes

This section examines three emblematic cases which indicate the manner in which accountability for violations of human rights have eluded the victims time and again despite years of arduous effort by victims and families. These are complemented by the timeline which follows.

### **Abduction of Eleven Persons by Navy Personnel- “Navy 11” Case**

Between August to September 2008, 6 men and 5 male youth were abducted, reportedly by navy personnel. First held at a location named ‘Pittu Bambuwa’ down Chaithya Road, the abducted persons were reportedly last held at an underground chamber called ‘Gunsite’ belonging to the Trincomalee Navy and Ocean Academy by their captors.<sup>1</sup> For nearly two years after his abduction, one of the youths kept in touch with his parents through telephone calls from personnel sympathetic to his plight. After May 2011, the telephone calls stopped.<sup>2</sup>

On 10th May 2009, it was reported that the then Navy

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1 Nirmala Kannangara, ‘Abductions of 11 Tamil youths twists and turns in the investigations’ 21 August 2018, Daily Mirror.

<https://www.dailymirror.lk/expose/Abduction-of-Tamil-youths-Twists-and-turns-in-the-investigations/333-154315>; ‘The Need for Accountability in Sri Lanka’s Criminal Justice System: A Glance at Seven Emblematic Cases’ (Centre for Policy Alternatives, 2019).

<https://www.cpalanka.org/wp-content/uploads/2019/03/FINAL-A-Glance-at-Seven-Emblematic-cases-.pdf>

2 M. Borham, ‘After explosive revelations in Court in Navy 11 youth abduction case : Families of missing boys hope justice is finally within reach’, Sunday Observer, 2 September 2018 <<https://www.sundayobserver.lk/2018/09/03/news-features/after-explosive-revelations-court-navy-11-youth-abduction-case-families> >

Commander Wasantha Karannagoda instructed an internal inquiry to be conducted against Lt. Commander Sampath Munasinghe, his personal security officer.<sup>3</sup> On 10th June 2009, Sampath Munasinghe was produced to the CID where he was arrested and subsequently given bail.

With the change of government in January 2015, Criminal Investigations Department (CID) initiated a fresh investigation. In March 2017, Lt. Commander Chandana Prasad Hettiarachchi alias ‘Navy Sampath’, a key suspect in the incident, went missing. It was alleged that he was provided Rs. 500,000 and smuggled out of the country in a ‘Fast Attack Craft’ (FAC) on the instructions of Admiral Wijeguneratne.<sup>4</sup> However, on 12th July 2017, former Navy Spokesperson Commodore D.K.P. Dassanayake and five others were arrested on charges of aiding and abetting the abductions.<sup>5</sup>

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3 Anurangi Singh, ‘Karannagoda deemed flight risk’, 24 February 2019, Sunday Observer.  
<http://www.sundayobserver.lk/2019/02/24/news-features/karannagoda-deemed-flight-risk>

4 Shamindra Ferdinando “CID: A Navy chief helped wanted man flee in FAC, Commanders don’t get involved in human smuggling’ Wartime disappearances”, 29 April 2018, The Island.  
<https://srilankatwo.wordpress.com/2018/04/30/cid-a-navy-chief-helped-wanted-man-flee-in-fac/>

5 Lakmal Sooriyagoda, ‘Former Navy Spokesperson D. K. P. Dassanayake further remanded’, 9 October 2017, Daily News.  
<http://www.dailynews.lk/2017/10/09/local/130662/former-navy-spokesperson-d-k-p-dassanayake-further-remanded>

By 13th August 2018, the CID arrested “Navy Sampath”, as the main suspect.<sup>6</sup> In February 2019, former Navy Commander, Admiral Karannagoda, was named as the 14th suspect in the case. He was accused of having known about the enforced disappearance by naval personnel he had command responsibility over, and choosing to take no action. The Controller General of Immigration and Emigration was ordered to prevent Karannagoda from leaving the country, after the CID informed the court that the Admiral was a flight risk.<sup>7</sup>

On 25th February 2019, Karannagoda filed a Fundamental Rights Application in the Supreme Court seeking an interim order preventing him from being arrested.<sup>8</sup> On 7th August 2019, President Maithripala Sirisena promoted Wasantha Karannagoda to the rank of Admiral of the Fleet.<sup>9</sup>

In late 2019, 14 persons including the former Navy Commander were indicted. According to reports, they were charged with 667 offences under the Penal Code. By January 2020, the Permanent

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6 Camelia Nathaniel and Lakmal Sooriyagoda “‘Navy Sampath’ Arrested and Detained”, 15 August 2018, Daily News.

<http://www.dailynews.lk/2018/08/15/local/159770/%E2%80%98navysampath%E2%80%99-arrested-and-detained>

7 ‘WANTED: Manhunt for ex- Navy Chief’, 24 February 2019, Sunday Observer. <http://www.sundayobserver.lk/2019/02/24/news/wanted-manhunt-ex-navy-chief>

8 ‘Karannagoda files FR against arrest’, 25 February 2019, Daily Mirror. [http://www.dailymirror.lk/top\\_story/Karannagoda-files-FR-against-arrest/155-162890](http://www.dailymirror.lk/top_story/Karannagoda-files-FR-against-arrest/155-162890)

9 ‘Sirisena Awards Lanka’s Highest Military Ranks To Mass Murder And Corruption Suspects’, 7th August 2019, Colombo Telegraph. <https://www.colombotelegraph.com/index.php/sirisena-awards-lankas-highest-military-ranks-to-mass-murder-and-corruption-suspect/>



High Court Trial-at-Bar issued summons for them to appear before court.<sup>10</sup>

On 28th January 2020, the Presidential Commission of Inquiry appointed to probe the alleged political victimisation of public servants under the previous administration (2015-2019) ordered the Attorney General not to proceed with the case against the former Navy Commander Karannagoda and former Navy Spokesman Commodore Dassanayake until it reached a conclusion on the matter.<sup>11</sup>

On 24th June 2020, Karannagoda filed a writ petition in the Court of Appeal challenging indictments filed against him at Colombo High Court Trial-at-Bar. The very next day, the Court of Appeal issued an interim injunction preventing the Trial-at-Bar from hearing the case against former Navy Commander Karannagoda.<sup>12</sup>

On 4th August 2021, the Attorney General's Department informed that it will not proceed with charges against former Navy commander Karannagoda.<sup>13</sup> On 13th October 2021, the

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10 Court summons former Navy Commander and 14 others, 23 January 2020, Daily FT.  
<https://www.ft.lk/News/Court-summons-former-Navy-Commander-and-14-others/56-694201>

11 'PCOI orders AG to halt investigations into former Navy Chief and Spokesperson', 28 January 2020, Daily FT.  
<https://www.ft.lk/News/PCOI-orders-AG-to-halt-investigations-into-former-Navy-Chief-and-Spokesperson/56-694500>

12 'Appeal Court issues interim injunction order preventing HC case against Karannagoda' 25th June 2020, The Sunday Morning.  
<https://www.themorning.lk/appeal-court-issues-interim-injunction-order-preventing-hc-case-against-karannagoda/>

13 'Abduction of 11 youths : AG informs court it will not proceed with

Court of Appeal permitted the AG to withdraw the indictment. However, in November 2021, the Colombo High Court Trial-at-Bar rejected a request made by the Attorney General to withdraw the indictment filed against the former Navy Commander on the grounds of irregularity.<sup>14</sup>

On 10th November 2021, the writ petition filed by parents of the youths who went missing in 2008 seeking an order quashing the decision of the Attorney General to withdraw the indictment filed against Admiral of the Fleet Wasantha Karannagoda was dismissed by the Court of Appeal.<sup>15</sup>

### **Visuvamadu Sexual Violence**

On the 6th of June 2010, two female returnees in Visuvamadu (Kilinochchi District) who had been displaced multiple times and had returned to their land from the Menik Farm IDP camp were gang raped and sexually assaulted by four military officers. Four military officers visited their homes in the night where they assaulted the women and children, gang-raped one woman and sexually assaulted the other.

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charges against former Navy commander' 4 August 2021, NewsWire.  
<https://www.newswire.lk/2021/08/04/abduction-of-11-youths-ag-informs-court-it-will-not-proceed-with-charges-against-former-navy-commander/>

14 'Court rejects AG's plea to withdraw indictment against former Navy Commander', 3 November 2021, Daily News.

<https://www.dailynews.lk/2021/11/03/law-order/263577/court-rejects-ag%E2%80%99s-plea-withdraw-indictment-against-former-navy>

15 'Writ petition challenging AG's decision to withdraw indictments against Karannagoda dismissed' 10 November 2021, Daily Mirror.

[https://www.dailymirror.lk/breaking\\_news/Writ-petition-challenging-AGs-decision-to-withdraw-indictments-against-Karannagoda-dismissed/108-224476](https://www.dailymirror.lk/breaking_news/Writ-petition-challenging-AGs-decision-to-withdraw-indictments-against-Karannagoda-dismissed/108-224476)

From the outset, the women faced challenges in reporting the offences. Two days after the incident when one survivor approached the police to lodge a complaint, the police refused to record the complaint and asked her to lodge a complaint with the military. She was offered money by the military to maintain her silence regarding the rape and when she refused, she was kept in military detention until the police arrived to record her complaint.<sup>16</sup>

When a crime is reported at the police station, the police are required to immediately inform the Magistrate's Court and obtain appropriate orders to conduct investigations. Once the police investigation is over, the Magistrate holds a preliminary inquiry.<sup>17</sup> If there is sufficient evidence to frame charges the case is forwarded to the Attorney General. This process took one year in the Visuvamadu case. It took another year for the Attorney General to forward an indictment to the High Court and a further six months for the trial to begin on 1st April 2013.<sup>18</sup> Delay or failure to conduct a detailed medical forensic examination also hindered the collection of evidence in this case as the victims were sent to the judicial medical officer two days after the offence had taken place.<sup>19</sup>

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16 Vishwamadu Military Rape Case: These Crimes are Not Committed by the Military Alone – WAN, Sri Lanka Brief, 8th October 2015, <<https://srilankabrief.org/vishwamadu-military-rape-case-these-crimes-are-not-committed-by-the-military-alone-wan/>>

17 Danushka Medawatte, Neloufer de Mel, Sandani N.Y. Abeywardena, Ranitha Gnanaraj, "Conjunctures of Silence:Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishwamadu Case" (2022) pp. 10-11

18 *ibid*

19 Conjunctures of Silence pp.11

On the 14th of June, the women identified the four perpetrators in an identification parade. While the four perpetrators were subsequently arrested, they were later released on bail, following which one absconded and has been tried in absentia. The attorney-at-law appearing on behalf of the victims had drawn attention to the fact that the victims needed police protection and had also objected to the bail request when the case was first heard as it would create fear and exposure to threats.<sup>20</sup>

The Jaffna High Court (in case no. 1569/12) on 7th October 2015 convicted all the accused of gang rape and sexual harassment, and sentenced them to 20 years of rigorous imprisonment, compensation of 500,000 and a fine to be paid to the gang rape victim and a further five years rigorous imprisonment, compensation of Rs.100,000 and a fine for the victim of sexual assault. However, the convicted soldiers filed an appeal with the Court of Appeal and on the 9th of October 2019, they were acquitted.

Significantly, one of the victims came to know of the acquittals through a neighbour who had heard the news on the radio. The Attorney General's Department which represents the victim had also failed to inform her of the appeals process.<sup>21</sup> This was a clear failure on the part of the Attorney General's Department to safeguard the right of the victim to have assistance and information required to attend and participate in judicial proceedings which is a right guaranteed to victims under the Assistance to and Protection of Victims of Crime

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20    ibid pp. 16

21    Conjunctures of Silence pp. 14

and Witnesses Act No. 04 of 2015.<sup>22</sup>

Nevertheless, one victim filed an appeal at the Supreme Court, the proceedings of which were ongoing as of 2022. However, the acquittals increased risks to her safety, and she and her family were subjected to harassment and intimidation. She was arrested twice, including one incident where she and her son were taken into custody for “hitting the police,” but no formal charges were filed.<sup>23</sup> Due to increasing safety concerns, she and her family sought refugee status and relocated overseas.<sup>24</sup>

Justice has continued to elude the victims for nearly twelve long years.

### **The Assassination of Lasantha Wickrematunge**

On 8th January 2009, Lasantha Wickrematunge, editor of the Sunday Leader newspaper, was killed by masked assailants in Colombo while he was driving to work.<sup>25</sup> He was a well-known critic of the government and had published investigations exposing state corruption and abuses committed during the war.<sup>26</sup>

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22 S. 3 (m), Assistance to and Protection of Victims of ACrime and Witnesses Act No. 04 of 2015.

23 Conjunctures of Silence pp. 16

24 Conjunctures of Silence pp. 9

25 Jyoti Thottam, ‘Dying for Journalism: Lasantha Wickrematunge of Sri Lanka’, 8 January 2009, Time. <http://content.time.com/time/world/article/0,8599,1870440,00.html>

26 ‘ASSASSINATION OF SRI LANKAN JOURNALIST: Wickrematunge v. Rajapaksa’ The Centre for Justice and Accountability. <https://cja.org/what-we-do/litigation/wickrematunge-v-rajapaksa/>

The initial post-mortem examination was inconclusive with regard to the cause of death.<sup>27</sup> His personal belongings which were on his person at the time were also reported missing.<sup>28</sup> By February 2009, the murder trial had begun in the Magistrate's Court of Mount Lavinia. However, there were several delays due to the failure of the police to provide a full investigation report and the police were not present in court on several occasions.<sup>29</sup> On 26th February 2010, two suspects named P. Jesudasan and Kandegedara Piyawansa were arrested by the Terrorism Investigation Department (TID) over the murder.<sup>30</sup> Seventeen other army officers were also subsequently arrested with regard to the murder. However, each suspect was released over the course of three years.<sup>31</sup>

On 13th October 2011, suspect P. Jesudasan reportedly died of a suspected heart attack in prison.<sup>32</sup> The second suspect Kandegedara Piyawansa was later released on bail after making a statement to the court on 6th September 2013.<sup>33</sup>

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27 'Evidence unfolding before courts on Lasantha's Murder', 28 March 2018, Daily Mirror.

<http://www.dailymirror.lk/article/Evidence-unfolding-before-courts-on-Lasantha-s-Murder147877.html>

28 *ibid.*

29 'The Need for Accountability in Sri Lanka's Criminal Justice System: A Glance at Seven Emblematic Cases' (Centre for Policy Alternatives, 2019). <https://www.cpalanka.org/wp-content/uploads/2019/03/FINAL-A-Glance-at-Seven-Emblematic-cases-.pdf>

30 *ibid.*

31 Kris Thomas, 'The Lasantha Wickrematunge Case: A Timeline', 29 September 2016, Roar Media.

<https://roar.media/english/life/reports/lasantha-wickrematunge-case-timeline>

32 *ibid.*

33 *ibid.*

On 15th July 2016, the Criminal Investigation Department (CID) arrested an officer of the Directorate of Military Intelligence in connection with the murder.<sup>34</sup> The suspect was charged with abduction of an eyewitness, assault, conspiracy, and making death threats.<sup>35</sup> On 27 September 2016, the CID exhumed Wickrematunge's remains for a new autopsy, and the remains were reportedly handed over to the Colombo Judicial Medical Officer (JMO).<sup>36</sup>

Meanwhile, on 21st October 2019, the civil case filed against Sri Lanka Podujana Peramuna (SLPP) Presidential candidate Gotabhaya Rajapaksa by Lasantha Wickrematunge's daughter Ahimsa Wickrematunge was dismissed by the California District Court in the United States.<sup>37</sup> In November 2019, Gotabhaya Rajapaksa became the President of Sri Lanka and became entitled to head of state immunity.<sup>38</sup> Thereafter, Ahimsa Wickrematunge filed a motion to dismiss her appeal against the US court decision.<sup>39</sup>

On 4th December 2020, the case filed over the murder of Lasantha Wickrematunge was postponed to the 04th of June 2021 by the Magistrate of Mount Lavinia.<sup>40</sup> While CID officers

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34 *ibid.*

35 *ibid.*

36 *ibid.*

37 'ASSASSINATION OF SRI LANKAN JOURNALIST: Wickrematunge v. Rajapaksa' The Centre for Justice and Accountability. <https://cja.org/what-we-do/litigation/wickrematunge-v-rajapaksa/>

38 *ibid.*

39 *ibid.*

40 Zulfick Farzan, 'Lasantha Wickrematunge homicide cases postponed', 4 December 2020, News First.

<https://www.newsfirst.lk/2020/12/04/lasantha-wickrematunge-homicide-238>

were reportedly present in the court, there was no representation from the Attorney General's Department.<sup>41</sup>

On 20th May 2021, the Parliamentary Council recommended former Inspector General of Police (IGP) Jayantha Wickramaratne to fill a vacancy in the membership of the Office for Missing Persons (OMP).<sup>42</sup> This appointment caused great concern, amidst allegations that he concealed evidence and 'derailed' investigations into the murder of Lasantha Wickrematunge.<sup>43</sup> Wickramaratne had previously obtained an interim order preventing his arrest in the Lasantha Wickrematunge murder case from the Supreme Court in March 2018.<sup>44</sup> CID investigators at the time believed the notebook which was found inside Lasantha Wickrematunge's car could provide vital evidence about the perpetrators.<sup>45</sup>

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cases-postponed/

41 'The Need for Accountability in Sri Lanka's Criminal Justice System: A Glance at Seven Emblematic Cases' (Centre for Policy Alternatives, 2019). <https://www.cpalanka.org/wp-content/uploads/2019/03/FINAL-A-Glance-at-Seven-Emblematic-cases-.pdf>

42 'Appointment of former IGP to Office of Missing Persons sparks alarm' 3 June 2021, Daily FT. <https://www.ft.lk/news/Appointment-of-former-IGP-to-Office-of-Missing-Persons-sparks-alarm/56-718759>

43 'Appointment Of Ex-IGP Who Concealed Evidence In Journalist's Murder Probe To Missing Persons Office A Blow To Victims Says Ahimsa' 1 June 2021, Colombo Telegraph. <https://www.colombotelegraph.com/index.php/appointment-of-ex-igp-who-concealed-evidence-in-journalists-murder-probe-to-missing-persons-office-a-blow-to-victims-says-ahimsa/>

44 Lakmal Sooriyagoda, 'SC stays arrest of former IGP' 1 March 2018, Daily News. <https://www.dailynews.lk/2018/03/01/law-order/144282/sc-stays-arrest-former-igp>

45 *ibid.*



Disappointment with domestic mechanisms have compelled the family of Lasantha Wickrematunge to continue to pursue justice from other jurisdictions or international tribunals. In January 2021, Ahimsa Wickrematunge filed a complaint with the United Nations Human Rights Committee.<sup>46</sup> On 19 September 2022, The People's Tribunal on the Murder of Journalists, an independent people's tribunal, presented its verdict on the case.<sup>47</sup> The Tribunal found the Sri Lankan government guilty and also asserted that the government, through their acts and omissions have committed violations of the right to life, the right to freedom of expression and the right to freedom from discrimination based on political opinion.<sup>48</sup>

As of 8th January 2023, it has been fourteen years since the assassination of Lasantha Wickrematunge. No significant progress has been in the pursuit of justice through domestic legal and investigative avenues.

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46 Krishan Francis, 'Daughter of slain Sri Lankan journalist files complaint with UN rights committee' 8 January 2021, *The Globe and Mail*. <https://www.theglobeandmail.com/world/article-daughter-of-slain-srilankan-journalist-files-complaint-with-un-rights>

47 Amani Nilar, 'People's Tribunal declares GOSL guilty of charges under human rights violations' 19 September 2023, *News First*. <https://www.newsfirst.lk/2022/09/19/people%E2%80%99s-tribunal-declares-gosl-guilty-of-charges-under-human-rights-violations/>

48 *ibid*



## A Timeline of Sixteen (16) Emblematic Cases

The following timeline traces various developments and key dates in relation to a number of selected cases emblematic of human rights violations in the country. It is not an exhaustive list and evinces some of the factors that contribute to a culture of impunity and lack of accountability. Ultimately, it is a reflection of the numerous setbacks facing victims and survivors in the long road to justice.

1. Murder of Mylvaganam Nimalarajan (journalist)	
<b>19 Oct 2000</b>	Mylvaganam Nimalarajan, a Jaffna based journalist was killed by unidentified gunmen. The assailants shot the journalist through the window of his study, where he was working on an article, and threw a grenade into the home before fleeing the premises. The attack occurred during curfew hours in a high-security zone in central Jaffna town.

	<p>Local journalists suspect that Nimalarajan’s reporting on vote-rigging and intimidation in Jaffna during the recent parliamentary elections may have led to his murder.<sup>1</sup></p>
<p><b>2000</b></p>	<p>Sri Lankan President Chandrika Bandaranaike Kumaratunga ordered defense authorities to launch an immediate inquiry into the assassination. In a letter dated 20 October, Committee to Protect Journalists urged the president to ensure that the investigation was pursued vigorously and its findings made public.</p> <p>Police failed to respond to repeated requests for information regarding the status of the investigation, which appeared to have stalled by year’s end.<sup>2</sup></p>
<p><b>6 May 2021</b></p>	<p>The Attorney General’s Department informed the Jaffna Magistrate’s Court that criminal proceedings cannot be continued against the six suspects in the murder case of journalist Nimalarajan. Accordingly, the court ordered the release of all six suspects.</p>

	Two of the six suspects in the cases are currently overseas. <sup>3</sup>
<b>22 Feb 2022</b>	The War Crimes Team at the London Metropolitan Police arrested a 48-year-old man in connection with Namalarajan's murder, according to a statement from police. Police released the man, whose name was not disclosed, and said in a statement that they were continuing to investigate him under Section 51 of the International Criminal Court Act of 2001, which covers genocide, crimes against humanity, and war crimes <sup>4</sup>
2. The 'Trinco Five': Murder of Five Tamil Students	
<b>2 Jan 2006</b>	Five Tamil students were killed near the beach in the Trincomalee town. Two other students suffered injuries but survived. The names and dates of birth of the five victims were: Manoharan Rajiharan – 22.09.1985; Yogarajah Hemachandra – 04.03.1985; Logitharajah Rohan – 07.04.1985; Thangathurai Sivanantha – 06.04.1985 and Shanmugarajah Gajendran – 16.09.1985.

	<p>The two injured youths were Yogarajah Poongulalon and Pararajasingham Kokulraj.<sup>5</sup></p> <p>Days later, the Trincomalee Magistrate gave an order to the effect that there were adequate grounds that a crime has been committed<sup>6</sup></p>
<p><b>Feb - March 2006</b></p>	<p>The official version put out first was that all seven were members of the Liberation Tigers of Tamil Eelam (LTTE) who had been armed with grenades with the intention of attacking a security forces post. The grenades had accidentally exploded killing five and injuring two, but the initial claim was soon proved wrong. The post-mortem conducted by Trincomalee JMO Dr. Gamini Gunatunga determined that the five had died from gunshot wounds.<sup>7</sup> Three had been shot in the head at close quarters while two died from shots to the chest and abdomen. Some had injuries that were not caused by gunshots. Trincomalee Magistrate V. Ramakamalan conducted an inquiry and recorded an interim verdict of gunshot injuries.</p>

On **February 12, 2006**, some members of the police and Special Task Force (STF) were taken into custody in connection with the killings. However, they were released in April that year for want of tangible evidence. The detained officers were released on the instructions of the AG consequent to the report by the Government Analyst<sup>8</sup> The then Attorney General C.R. de Silva issued a directive that the case should be pursued again if the prosecution acquired fresh evidence.

Among those killed in the ensuing cover-up were<sup>9</sup>:

**24 January 2006**- Subramaniam Sugitharajah, a local Tamil journalist whose photos of the dead students, taken at a heavily guarded mortuary, provided irrefutable evidence of the manner of their deaths<sup>10</sup>;

Balachandran, a taxi-driver who had shared information to relatives of the deceased about the three-wheeler witnessed at the scene of the crime; and

**13 May 2007**- Handungamuwe Nandarathana, a Buddhist monk who publicly condemned the killings.<sup>11</sup>

	<p>On <b>11 March 2006</b>, Dr Manoharan received an anonymous letter written badly in Tamil, warning him against giving further evidence</p> <p>The Sri Lanka Human Rights Commission appointed former High Court Judge T. Sunderalingam as a special rapporteur to probe the killings. His report dated <b>31 March 2006</b> was not publicised at the time. The report states that ‘it is highly unlikely that anyone other than the STF could have shot those who were at the Gandhi statue’.<sup>12</sup></p>
<b>14 May 2006</b>	<p>Dr Manoharan claims to have yet again seen the vehicle of SSP Kapila Jayasekera parked outside. Eventually, both he and his family were forced to flee the country and subsequently received asylum in the UK.</p>
<b>3 Nov 2006-2007</b>	<p>A Presidential commission to inquire into 15 prominent human rights cases was established. Retired Supreme Court judge Udalagama was the head of the</p>



	<p>commission. The Trinco Five case is listed in the mandate of the work of the commission.</p> <p><b>August 2007-</b> The Udalgama commission received evidence from the witnesses, including witnesses residing overseas (via videolink).</p> <p>The commission in its report concluded that ‘there are strong grounds to surmise the involvement of uniformed personnel in the commission of the crime’. However, on the Trinco Five Case, the Commission did not accuse any individual, but stated that ‘those responsible should have the courage to admit that they have erred and tender a public apology which could be a catharsis for reconciliation.’</p>
<p><b>May 2008</b></p>	<p>The Presidential Secretariat issued instructions to suspend the arrangements made by the commission to receive evidence via video link and to await the enactment of the Witness protection Act<sup>13</sup></p>

**March - Oct  
2013**

The UN Human Rights Council sessions in **March 2013** in Geneva were a watershed of sorts. Two of the parents concerned Dr. Kasipillai Manoharan, the father of Ragihar and Aiyamuttu Shanmugarajah, the father of Gajendran were in Geneva during the UNHRC sessions and participated in several meetings and conferences held on the sidelines. They pointed out that no action had been taken for seven years. Their impassioned pleas demanding justice for their children made a profound impact in Geneva. To his credit, the then Plantation Industries Minister Mahinda Samarasinghe who was in Geneva leading the Lankan delegation at the UNHRC returned to the country and pressed for an investigation and follow up action. Thereafter, the CID recommenced its probe.

With the CID probe in progress, the current Foreign Secretary Ravinatha Aryasinha who was earlier Sri Lanka's permanent representative at the UN in Geneva addressed the UNHRC regular session in May 2013. During the course of his address, Aryasinha stated as follows: "Pursuant to recommendations made by the LLRC in relation to the killings of the five students in Trincomalee, investigations have been concluded and upon

studying the material, the Attorney General has advised the police to initiate non-summary proceedings, and the formal institution of these proceedings before the Trincomalee Magistrate is due to take place in the first week of June.”

On **4 July 2013**, twelve Special Task Force (STF) personnel and a police officer were arrested and produced in court the following day. The officers were Inspectors Sarath Chandra Perera and Rohitha Vijithakumara, Sgt. M.G. Jayalath, Sgt. A.P. Amal Pradeep, Constables R.K. Ratnayake, M. Chaminda Lalitha, R.M. Udaya Mahinda Bandara, M.G.H. Sanjeewa, K.A. Tharaka Ruwansiri, J.M. Nimal Bandara, J.M. Senarath Dissanayake and S.J. Indika Thushara of the STF. The police officer was Sub Inspector P.G. Ananda Bulanawewa.

**September 2013-** preliminary inquiry begins in the Trincomalee MC.

	<p>On <b>14 October 2013</b>, they were all released on bail. The case however proceeded in fits and starts.</p> <p>The 13 accused were charged by the CID under Section 296 of the penal code for committing the murder of Manoharan Rajiharan, Yogarajah Hemachandra, Logitharajah Rohan, Thangathurai Sivanantha and Shanmugarajah Gajendran by shooting near the Gandhi roundabout on January 2, 2006 and the attempted murder of Yogarajah Poongulalon and Pararajasingham Kokulraj under Section 300 of the penal code read with section 32. The CID had submitted seven productions to court in this connection and cited 36 witnesses.<sup>14</sup></p>
<p><b>16 September 2015</b></p>	<p>The OHCHR Investigation on Sri Lanka (OISL) determined that there were ‘reasonable grounds to believe that security personnel, including STF personnel, carried out the murders of the five students’<sup>15</sup>.</p>

<b>2017</b>	<p>The government informs a key witness, Dr. Manoharan that he could give evidence before a local court through Skype using the Assistance to and Protection of Victims of Crime and Witnesses Act. However, according to the amendment a witness can only provide such evidence at a Sri Lankan diplomatic Mission office.</p> <p>This was a term Dr Manoharan was not agreeable with. The notion of visiting the Diplomatic Mission had made him uncomfortable. As a result, Human Rights Organisations called for further amendments to the law, taking into account all concerns that victims may have to ensure that those like Dr Manoharan have a genuine opportunity to provide unfettered evidence.</p> <p>As Dr Manoharan was not given the opportunity to provide evidence through satellite technology from a location where he feels safe, the CID lost the chance to provide vital evidence to the courts resulting in this most recent outcome. But according to Dr Manoharan, the lack of evidence should be blamed on the CID.</p>
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	<p>“They did not conduct proper investigations” he accused, adding that there are a number of witnesses in the country and abroad other than himself, whom the CID had failed to trace.<sup>16</sup></p>
<p><b>Jan 2018</b></p>	<p>The prolonged legal delay even after the advent of the new government prompted former US envoy Atul Keshap to tweet about it in January 2018 and reiterate “justice delayed is justice denied.” The then Law and Order Minister Sagala Ratnayake responded to it by tweeting that the case was progressing after the legal reforms. “We could not proceed with the case as the main witness was overseas and not in a position to support proceedings. The case is now progressing as new reforms have allowed the use of Skype evidence,” Sagala Ratnayake said on Twitter in January 2018.<sup>17</sup></p> <p>In 2018, summons were issued to key witnesses living abroad through the consular branch of the Ministry of Foreign Affairs.</p>

<p><b>January- July 2019</b></p>	<p><b>January 2019-</b> The preliminary inquiry is pending a response for the summons issued in 2018.<sup>18</sup></p> <p><b>3 July 2019-</b> Eight of the thirty-six witnesses cited were not heard by court as they had not made themselves available to testify. These included key witnesses including two surviving eye-witnesses. After protracted hearings, Trincomalee Chief Magistrate M.M. Mohammed Hamza acquitted all thirteen accused of all charges. The magistrate, after considering the evidence, ruled that the accused were released due to non-availability of sufficient evidence to continue the case in a satisfactory manner. Additional Solicitor General Dilantha Rathnayake prosecuted and Attorneys Dhanushka Madagedara and S. Chandrasiri appeared for the defence in the last stages of the case. Thus ended the Trinco-5 case. It is unclear at present as to what the Attorney General further proposes to do regarding this case.<sup>19</sup></p>
<p><b>10 July 2019</b></p>	<p>AG directs fresh investigation into Trinco students murder case instructing Acting Inspector General of Police (IGP) C. D. Wickramaratne to try and</p>

	locate the witnesses in the case. Most of the witnesses are believed to be overseas.
3. ACF Aid Workers Massacre	
<p><b>4 Aug 2006</b></p>	<p>On Sunday, August 6, 2006, Action Against Hunger's offices in Paris confirmed the deaths of 15 of the organisation's aid workers in the Sri Lankan town of Muttur. Benôit Miribel, Director-General of the organisation described the disaster as the worst in Action Against Hunger's 27 years of existence.</p> <p>The killings occurred on Friday, August 4, 2006, in the northeastern town of Muttur, where Sri Lanka's army has been engaged in heavy battle with the rebel Tamil Tigers. Before the killings, Action Against Hunger had 15 expatriate workers and 224 Sri Lankan employees in the country. (The organisation employed 3 expatriates and more than 50 Sri Lankan staff members in the district of Trincomalee where Muttur is located.)</p>



	<p>The aid workers, 11 men and 4 women, were found dead, lying face-down in their office compound, by Jeevan Thiagarajah, Executive Director of the Consortium for Humanitarian Agencies, who identified them by their Action Against Hunger T-shirts. The workers were involved in post-tsunami relief work and could not be evacuated due to the fighting. The Sri Lankan army holds the Tamil Tigers responsible for the killings. The Tigers blame the army.<sup>20</sup></p>
<p><b>7 March 2007</b></p>	<p>ACF: Last Wednesday on 7th of March, a hearing was held at the Magistrate's Court of Kantale (East of Sri Lanka) regarding the unprecedented massacre of 17 Action Against Hunger (ACF) aid workers. The magistrate pronounced his verdict following the first inquiry: that there was no leads to those responsible for the murders identified for the moment; that there was the need for the involvement of Australian observers for a ballistics examination and that there were concerns regarding some of the flaws during the inquiry.</p> <p>Judge's verdict after 7 months of inquiry</p>

An inquiry was launched on August 22, following the massacre of 17 ACF aid workers on 4th August. During the investigation, 11 corpses of the ACF team were exhumed and a second post-mortem examination was conducted at the end of October by Sri Lankan experts in the presence of an Australian observer.(1) Some items relevant to the enquiry were found during this second autopsy. According to an arrangement signed between the governments of Sri Lanka and Australia, Sri Lankan experts should have conducted a ballistics examination following this autopsy in the presence of Australian observers. However, despite the order of the Magistrate of Kantale and an ACF request regarding the presence of international observers, the ballistic examination was carried out without any Australian observers.

During the hearing held on 7th March, the magistrate has taken into consideration this issue, and even though the ballistic reports have been accepted by the court, he has recommended that another ballistic examination should be conducted in the presence of Australian observers: "Accordingly I direct that steps be taken to commence investigations immediately as directed before. I further direct that if the memorandum of understanding between

the Australian Government and the Government of Sri Lanka on the technical issues relating to the investigation of the incidents concerned, is still in force, the provisions of such memorandum to be complied with."(Abstract of the verdict).

The Magistrate decided to maintain hearings, which is legal but unusual, due to this procedural issue and others flaws, in order to follow the development of the investigation process now led by the Criminal Investigation Department (CID). "The court takes into consideration the statement by the Counsel appearing for the families of the victims to the effect that the conduct of the investigations into these incidents are not at a satisfactory level." (Abstract of the verdict). The next hearing will be held on 25 of April.

The verdict of the magistrate also described the death of the 17 ACF aid workers: they were all killed by shots to the head, early in the morning of 4 August at Muttur. Death certificates can now be issued to the families of the victims following the verdict, who can also apply for legal compensation from

the government, more than 7 months after the killing (noting that ACF has already compensated the families of the victims).

Finally, the Magistrate expressed his concern regarding the absence of witnesses: "I take note of the fact brought to my notice of the prevailing climate of insecurity in the region which inhibits witnesses coming forward to give evidence."

ACF salutes the work done by the Magistrates (2) during the past months and welcomes the decision taken by the current Magistrate to continue the hearings to follow the inquiry led by the CID. ACF expresses strong concerns that the CID did not always follow the orders given by the judge and hopes for a closer adherence to the Court requests in the future to allow for an open and proper proceedings.

Specifically, ACF urges the Sri Lankan authorities, the CID and Australian observers to conduct a ballistic examination as rapidly as possible, as ordered

by the Magistrate on December 6, 2006. This ballistic examination is crucial to find a credible lead to those responsible for the massacre of our 17 colleagues at Muttur.

In addition, no direct testimony was heard by the Court concerning the killings, because of the lack of any legal mechanism in Sri Lanka to protect witnesses. As the Presidential Commission of Inquiry is specifically studying this issue, ACF strongly hopes that concrete measures are going to be introduced to remedy this situation.

All evidence must be investigated and made available to the Court in a legal and secure manner in order to identify the culprits. ACF complies with the Sri Lankan Law process and hopes that the CID will also follow legal procedures or Court orders during its investigation. ACF is still strongly committed to discovering the truth, 7 months after the unprecedented massacre of the 17 ACF aid workers.<sup>21</sup>

<b>2014</b>	In 2014, the UN Human Rights Council (UNHRC) explicitly called for the creation of a special court with an international dimension to investigate the Muttur massacre, so that justice could be served after years of impunity. However, the request was disregarded by the Sri Lankan Government. <sup>22</sup>
<b>13 June 2019</b>	Attorney General, Dappula de Livera, ordered police to speed up investigations into the ACF massacre
4. 'The Missing Eleven': The Abductions of 11 persons	
<b>August-September 2008</b>	6 men and 5 male youth of Tamil nationality were abducted in 2008. <b>25 August 2008-</b> Roshan Lyon (21 yrs) and Amanon Lyon (50 yrs) are abducted. 4 others were abducted on different occasions in that year. Ransom paid by some families in response to demands for ransom. <sup>23</sup>

	<p>Mohamed Ali Anver, Anton (48 yrs), Thyagarajah Jegan (32 yrs), John Reid (21 yrs)<sup>24</sup></p> <p><b>17 September 2008-</b> 5 youth- Rajiv Naganathan (21 yrs) and 4 friends (Pradeep Vishwanathan (18 yrs), Thilakeswaran Ramalingam (17 yrs), Mohamad Sajid (21 yrs) and Jamaldeen Dilan) go missing in Badowita, Dehiwala on their way to meet a man identified as Mohamed Ali Anver, later revealed to be the informant of the abductors. For nearly two years after his abduction, Rajiv kept in touch through several phone calls taken from mobile phones belonging to personnel sympathetic to the boy's plight. First held at Chaithya Road in a place locally known as 'Pittu Bambuwa' after his abduction, the group was later moved to the Trincomalee Naval Command to be held captive at the 'Gun Side' underground prison cells. After May 2011 the calls stopped<sup>25</sup></p>
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<b>10 May 2009</b>	It was reported that the then Navy Commander Wasantha Karannagoda instructed Sri Lanka Navy Intelligence to conduct an internal inquiry based on information received against Lt. Commander Sampath Munasinghe
<b>26 May 2009</b>	Then Lt. Commander Sampath Munasinghe's quarters at the Navy Headquarters, Colombo, was searched on the instructions of the then Navy Commander Wasantha Karannagoda. Officers discovered a passport, several NICs together, with many other items including live cartridges, mobile phones, credit cards and SIM cards
<b>28 May 2009</b>	Former Navy Commander Wasantha Karannagoda filed a written complaint to the CID against his personal security officer then Lt. Commander Sampath Munasinghe regarding his possible involvement in the abductions. In the complaint, Karannagoda made reference to the recovery of four national identity cards, one passport, one mobile phone, promissory notes worth over



	one million rupees and approximately around 450 rounds of ammunition from Munasinghe's cabin.
<b>30 May 2009</b>	Items found in possession of Lt. Commander Sampath Munasinghe are handed over to the CID by the Navy subsequent to the complaint, for further investigation
<b>May 2009</b>	Rear Admiral JJ Ranasinghe, Vice Chancellor of the Kotelawala Defence University (KDU) brought the disappearance of 21 year old Rajiv Naganathan, one of the missing 11, to the notice of Admiral Karannagoda. Admiral Karannagoda called for an explanation from Lt. Commander Ranasinghe who denied the allegation. Admiral Karannagoda then sent then Eastern Commander Rear Admiral Thusitha Weerasekera to check the junior officer's claim. Rear Admiral Weerasekera also confirmed the claim that no secret prisoners were being held <sup>26</sup>

<b>10 June 2009</b>	Maj. Neville Priyantha Attanayake of the Army Intelligence Unit produced Sampath Munasinghe to the CID where the latter is arrested and subsequently given bail
<b>15 June 2009</b>	The then Director of the CID ordered a full probe into the incidents, which has resulted in 11 arrests of Naval Officers since then.
<b>17 June 2009</b>	Former Minister for Fisheries and Aquatic Resources, Felix Perera, addressed a letter to the then Navy Commander Wasantha Karannagoda, requesting the release of three of the missing 11: Rajiv Naganathan, Pradeep Vishwanathan and T.Ramalingam who were purportedly in the custody of the Navy
<b>January 2015</b>	Criminal Investigations Department (CID) initiated a fresh investigation after the change of government

<b>28 February 2015</b>	Statement of Commodore D.K.P. Dassanayake was recorded regarding the disappearances
<b>2016</b>	<p>The CID whilst carrying out investigations into the disappearance of the 11 youth at the Sri Lanka Maritime Naval Academy, had been anonymously informed that the vehicle belonging to John Reid, one of the 11 victims, was being used by the Sri Lanka Navy under a forged license plate 'Navy 2016'. A CID investigation team, led by Inspector of Police (IP) Nishantha Silva discovered the said vehicle within the Sri Lanka Naval Academy</p> <p>The Navy were unable to produce a single document to claim ownership to the vehicle they were using with the aforementioned forged registration number. Although the Navy had deleted the engine and chassis numbers, the brother and brother-in-law of the victim had identified the vehicle, which had been repainted blue, the original colour being white.</p> <p>The CID officers, after obtaining a court order from the Colombo Magistrate's Court, examined Gemunu Base at Welisara for hidden parts of</p>

	<p>the vehicle, and discovered a heap of vehicle parts hidden in a room adjacent to the Navy Intelligence Sailors' Hostel. Upon inspection of the closed room the CID were able to uncover 72 parts of a dismantled vehicle, which the Navy informed them were pieces of a vehicle laden with explosives, although no records showed that they had informed the police or the bomb disposal unit of the vehicle</p>
<p><b>March 2017</b></p>	<p>Lt. Commander Chandana Prasad Hettiarachchi alias 'Navy Sampath' a key suspect in the incident, went missing. It was alleged that he was provided Rs. 500,000 and smuggled out of the country in a 'Fast Attack Craft' (FAC) on the instructions of Admiral Wijeguneratne. His disappearance occurred at a time when there were two specific requests to hand him over to the CID in March 2017. Hettiarachchi was also among one of the five suspects who was facing indictment over the assassination of former Jaffna District TNA MP Nadarajah Raviraj and his bodyguard Sergeant Lakshman Lokuwella, and acquitted by the High Court in 2016</p>

<b>12 July 2017</b>	Former Navy Spokesperson Commodore D.K.P. Dassanayake and five others were arrested on charges of aiding and abetting the abductions of 11 youth. Colombo Fort Magistrate Lanka Jayaratne ordered them to be remanded till 20 October 2017
<b>12 July 2017</b>	<p>Police spokesman Ruwan Gunasekara said navy Commodore D.K.P. Dasanayake was arrested Wednesday after an investigation into the abduction of 11 youth in the capital Colombo. According to Gunasekara, the youth had been abducted, illegally detained and then disappeared during the period of 2008 -2009. Dasanayake has been accused of aiding and abetting the incident.</p> <p>Dasanayake will appear before a magistrate. Three other Navy members have been arrested and remanded over the same incident.<sup>27</sup></p>
<b>10 August 2017</b>	The CID informed Colombo Fort Magistrate Lanka Jayaratne of the involvement of Former Navy Commander Wasantha Karannagoda in the abduction of the youth who were detained at the Gunside Navy camp in

	<p>Trincomalee, and allegedly tortured and killed subsequently.<sup>208</sup> The abduction was also known to Commodore Udaya Keerthi, D.K.P. Dassanayake, Lt. Commander Ranasinghe, former intelligence director Guruge and other top Navy officials at the time. The CID alleged that Lt Commander Chandana Prasad Hettiarachchi alias 'Navy Sampath' had committed the murders</p>
<p><b>9 January 2018</b></p>	<p>Commodore D.K.P. Dassanayake and five others were granted bail by Colombo High Court Judge Manilal Waidyathilake on strict bail conditions</p>
<p><b>22 February 2018</b></p>	<p>Colombo Fort Magistrate Lanka Jayaratne ordered the CID to inform her about its decision to arrest Former Navy Commander Wasantha Karannagoda by 05 March 2018. Suspects in the case are named as Sampath Munasinghe, D.K.P. Dassanayake Sumith Ranasinghe, Lakshman Udayakumara, Nalin Prasanna Wickremasuriya, Tammitta Ihalagedara Dharmadasa, Rajapakse Pathiranalage Kithsiri, Kasthuri Gamini</p>

	and Muthuwa Hennada Aruna Thushara were produced before Court
<b>31 July 2018</b>	CID Director Shani Abeysekera alleged how former officials of the Attorney General's Department had interfered with the investigations carried out by the CID, and had instructed the OIC and himself to refrain from questioning certain suspects regarding the abductions
<b>13 August 2018</b>	<p>The Criminal Investigation Department (CID) of the police arrested Lt. Commander Chandana Prasad Hettiarachchi, alias "Navy Sampath", as the main suspect. The arrest was made by the OIC of the Gang Robbery Unit Nishantha Silva at Lotus Road, Colombo. At the time of arrest, he was in possession of several fake identity cards, one of which was used to get a passport. The suspect had been impersonating a guard named Polwatte Gallage Ashoka, and was working at an estate in Dompe</p> <p>The CID accused then Chief of Defence Staff Admiral Ravindra Wijeguneratne of shielding one of the main suspects, and the court also ordered his arrest.<sup>28</sup></p>

<p><b>15 August 2018</b></p>	<p>Colombo Fort Magistrate Lanka Jayaratne ordered the Bank of Ceylon to release details of transactions between March-May 2017 of an account maintained by the Navy through which Rs.500, 000 was given to Hettiarachchi to flee the country. He was ordered to be further interrogated as to his connections who helped him flee the country for a short period, and further remanded till 29 August 2018.</p>
<p><b>29 August 2018</b></p>	<p>‘Navy Sampath’ was further remanded till 12 September 2018. Colombo Fort Magistrate Lanka Jayaratne ordered the arrest of Chief of Defence Staff Admiral Ravinda Wijegunaratne for his role in helping ‘Navy Sampath’ evade arrest</p>
<p><b>23 Sept. 2018</b></p>	<p>CID witness in navy abductions case, Lt. Commander Krishan Welagedara, faces persecution.</p>
<p><b>27 Sept 2018</b></p>	<p>Chandana Prasad Hettiarachchi was further remanded till 10 October 2018. CID officials further informed the Magistrate’s Court that they would obtain</p>



	a statement from the Chief of Defence Staff Admiral Ravinda Wijeguneratne regarding his involvement in shielding the main suspect.
<b>20 Oct 2018</b>	IP Nishantha Silva appearing on behalf of the CID informed Fort Magistrate Lanka Jayaratne that they have enough evidence to arrest Admiral Wijeguneratne
<b>2 Nov 2018</b>	Colombo Fort Magistrate Ranga Dissanayake ordered the CID to arrest Chief of Defence Staff Admiral Ravinda Wijeguneratne
<b>28 Nov 2018</b>	Admiral Ravinda Wijeguneratne surrendered himself to court. He is remanded till the 05 of December 2018 by Colombo Fort Magistrate Ranga Dissanayake
<b>5 Dec 2018</b>	Colombo Fort Magistrate Ranga Dissanayake granted Chief of Defence Staff Admiral Ravinda Wijeguneratne conditional bail including two sureties of Rs.

	<p>1,000,000. The suspect was warned by the Magistrate not to interfere with witnesses or obstruct them and not to use the suspect's office as a means to intimidate any of the witnesses or investigation officers of the inquiry as it would reverse his bail conditions. The Magistrate also considered a related matter on intimidation filed by one of the witnesses of the incident, Galgamage Laksiri, which stated that the suspect had once tried to assault and shoot him, and expressed his concern that the police had failed to carry out any proper investigation into the said complaint. On the basis of the report filed by the Fort Police, the Magistrate pointed out certain errors in it, which were in contravention to the Criminal Procedure Code</p>
<p><b>9 Jan 2019</b></p>	<p>– A key suspect in the ransom racket nicknamed 'Annachchi' was identified by two witnesses, Thyagaraja Parameswari and Thyagaraja Jaya, respectively. The case was called before Colombo Fort Acting Magistrate Priyantha Liyanage. The Magistrate further ordered that the suspects who were already in remand custody in connection with the case, namely, Navy Lieutenant Commander Prasad Hettiarachchi aka 'Navy Sampath', Navy minor officer</p>

	<p>Sanjeewa Senaratna and ‘Annachchi’ be further remanded till the next hearing date. Appearing on behalf of the CID Inspector Nishantha Silva reported that the probe revealed that the suspects had committed several offences including demanding extortion money, and that they had also identified a further number of suspects in the case, and that the inquiry was still in progress. The Inspector further informed court that the CID hopes to promptly finish the investigation process before sending case files for perusal by the Attorney General</p> <p>Taking into account the submissions made by Counsel, the Acting Magistrate postponed the case until 27 March 2019</p>
<b>22 Feb 2019</b>	<p>A sailor attached to KKS Naval base was arrested by the CID for allegedly abducting and killing of three youths (out of 11 youths disappeared in 2008-2009)</p>

**24 Feb 2019**

In February 2019, former Commander of the Sri Lanka Navy, Admiral Wasantha Karannagoda, was named as the 14th suspect in the case. He was accused of having known about the enforced disappearance by naval personnel he had command responsibility over, and choosing to take no action<sup>29</sup> The Controller General of Immigration and Emigration has been ordered to prevent former Navy Commander Wasantha Karannagoda from leaving the country, after CID sleuths informed court on Friday (22) that the Admiral was a flight risk.

Fort Magistrate Ranga Dissanayake issued the order after OIC, CID Gang Robberies Branch Nishantha Silva filed a B report saying that Admiral Karannagoda had evaded summons to be present at the CID for questioning on Thursday (21).

Notice had been sent to Admiral Karannagoda's Polhengoda address through the Kirulapone police, but was returned on the basis that the former Navy Chief did not reside on the premises, the CID informed Court. A person identifying himself as the Admiral's brother had told the police officer that

	<p>the former Navy Chief was residing in Pitakotte. However, there had been no one at the premises in Baddegana, Pitakotte when police visited to deliver the notice. IP Silva told Court that attempts were made to contact the former Navy Commander on his mobile telephone, but the service has been disconnected.</p> <p>The CID has written to the Navy's Legal Division, seeking their assistance to locate the former Commander in a letter dated February 21, 2019, but had not received a reply yet, IP Silva told the Fort Magistrate.<sup>30</sup></p>
<b>25 Feb 2019</b>	Former Navy Commander Wasantha Karannagoda filed a Fundamental Rights Application in the Supreme Court seeking an interim order preventing him from being arrested in connection with the investigations into the abduction and killing of 11 youths in 2008-2009
<b>14 June 2019</b>	Two suspects in the case of abduction of 11 youths released on bail

<b>7 July 2019</b>	Investigators of the Criminal Investigations Department (CID) probing the Navy abductions case say former Navy Commander Admiral Wasantha Karannagoda has admitted to having knowledge of the youth being abducted
<b>7 August 2019</b>	President Maithripala Sirisena promotes Wasantha Karannagoda, a suspect charged with the murder of 11 young men abducted and illegally detained by his intelligence officers in 2008-2009 to the rank of Admiral of the Fleet
<b>21 August 2019</b>	Promotion of Navy officers charged in abduction of 11 youths is a regret for aggrieved parties, court was told. When the case was taken up before Colombo Fort Magistrate Ranga Dissanayake, the OIC of the Organized Crimes Investigation Unit of the Criminal Investigation Department (CID), Inspector Nishantha Silva told the court that justice should be served to the aggrieved parties.

<b>12 November 2019</b>	<p>Attorney General Dappula de Livera PC has made the necessary arrangements to file indictments against former Navy Commander Wasantha Karannagoda and 13 others in connection with the abduction, torture, extortion and conspiracy to murder 11 persons in 2008 and 2009.</p> <p>Senior State Counsel Janaka Bandara told news media that the indictments comprising 667 counts have already been prepared under the Penal Code and are to be dispatched to a High Court Trial-at-Bar once a directive is received from the Chief Justice.</p> <p>The Attorney General has requested the Chief Justice to direct that criminal proceedings into this controversial case be instituted in the Colombo High Court Trial-at-Bar after considering the nature and the circumstances relating to the commission of the offences and the complex nature of the available evidence<sup>31</sup></p>
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<p><b>22 January 2020</b></p>	<p>The Permanent High Court Trial-at-Bar issued summons for 14 individuals, including the former Commander of the Navy Admiral (Retd) Wasantha Karannagoda, to appear before the Court on 24 January<sup>32</sup></p> <p>Former Navy Commander Admiral of the Fleet Wasantha Karannagoda, Rear Admiral D.K.P. Dassanayake and Commander R. K. Sumith Ranasinghe filed complaints to the CoI citing a case filed against the, at the Permanent High Court Trial-at-Bar allegedly based on false and fabricated evidence.</p>
<p><b>28 January 2020</b></p>	<p>The Presidential Commission of Inquiry (PCoI) appointed to probe the alleged political victimisation of Public Servants under the previous administration (2015-2019) has ordered the Attorney General (AG) not to proceed with the case against former Navy Commander Admiral Wasantha Karannagoda and former Navy Spokesman Commodore D.K.P. Dassanayake until it reached a conclusion on the matter.<sup>33</sup></p>



<b>29 January 2020</b>	Attorney General Dappula de Livera PC has informed the Presidential Commission of Inquiry (PCoI) appointed to look into alleged political victimisation of public servants that the Commission of Inquiry has no statutory or legal authority to order the Attorney General to refrain from performing his statutory functions regarding the abduction of eleven persons in 2008 and 2009.
<b>7 February 2020</b>	<p>The Centre for Policy Alternatives (CPA) and its Executive Director, Dr. Paikiasothy Saravanamuttu filed a Fundamental Rights application challenging some powers granted to the Commission of Inquiry to Investigate Allegations of Political Victimisation During the Period Commencing 08th January 2015 and Ending 16th November 2019.</p> <p>Former Navy Commander Admiral Wasantha Karannagoda has been issued summons for the third time pertaining to the case over the disappearance of eleven youth in Colombo in the years 2008/2009.</p>

**17-18  
February  
2020**

The Presidential Commission of Inquiry (PCoI) to investigate political victimisation summoned former Navy Commander Wasantha Karannagoda, who appeared before the Commission. Rear Admiral D.K.P. Dassanayake too appeared at the commission to provide evidence on the complaint he filed.

Karannagoda testifying before the CoI said various criminal charges were brought against former Defense Secretary Gotabaya Rajapaksa and himself by influencing witnesses during the previous government.

Karannagoda alleged that former Criminal Investigation Department (CID) Director Shani Abeysekera and Inspector Nishantha Silva have hunted down war heroes at the behest of the previous government. He added that such actions had a serious impact on national security and resulted in the Easter Sunday attack.

Karannagoda alleged that former Minister Mangala Samaraweera had entered into an agreement with the US government and convinced that the Sri Lankan military committed war crimes during the military operations to liberate the country from terrorists. He testified that attempts were made to take the former Defense Secretary, the then President Mahinda Rajapaksa,

	<p>and other key personnel in war against the terrorists before the UNHRC by the previous government.</p>
<p><b>24 February 2020</b></p>	<p>For the fourth time, Colombo High Court Trial-at-Bar ordered to re-issue summons on former Navy Commander Admiral of the Fleet Wasantha Karannagoda in connection with the indictments filed over the abduction of eleven persons in 2008 and 2009.</p> <p><b>Rear Admiral D.K.P. Dassanayake testified before the CoI</b></p> <p>“If the Government of Good Governance did not bring him back to the country, when he was following post-graduate studies on counter-terrorism in the United States, he could have served to prevent the April 21 Terror Attacks from taking place. Dassanayake said he left for the United States of America on the 14 September 2014 to follow post-graduate studies on counter-terrorism and it contained an important program on countering Islamic-Extremism.</p> <p>He said, after the Government of Good Governance was elected, then Navy Commander Vice Admiral Jayantha Perera informed him to return to the</p>

country as per the instructions of then Prime Minister Ranil Wickremesinghe following a decision made by the Security Council at the time. Dassanayake said he returned to the country on a 14-day educational holiday adding he was requested to appear at the Criminal Investigations Department on the 19th of February 2015 to provide a statement on the abduction and enforced disappearances of 11 youth in 2008 and 2009.

Dassanayake said rather than recording a statement from him, the OIC of the Criminal Investigations Department Nishantha De Silva filed a motion and obtained an overseas travel ban against him. Dassanayake went on to note he made multiple requests for the travel ban to be lifted, however they were turned down by court. He added the situation added serious mental stress on his wife and two children who were in the US.

Dassanayake said CIDs Nishantha De Silva had attempted to make him a state's witness by adding pressure on his wife and children. He further said he was pressured to state that a camp operated under code name GOTA was used for this, under Former Navy Commander Wasantha Karannagoda , who is now Admiral of the Fleet and Former Defence Secretary Gotabaya

	Rajapaksa, who is now the president.”
<b>03 March 2020</b>	<p>Rear Admiral Dassanayake produced two voice clips of telephone conversations among SSP Shani Abeysekera, IP Nishantha Silva and MP Ranjan Ramanayake.</p> <p>The lawyers appearing for the respondents informed the commission that ASP BS Tissera would not appear before the Commission today.</p>
<b>24 June 2020</b>	Former Navy Commander Admiral of the Fleet Wasantha Karannagoda filed a writ petition in the Court of Appeal challenging indictments filed against him at Colombo High Court Trial-at-Bar.
<b>25 June 2020</b>	The Court of Appeal issued an interim injunction preventing Trial-at-Bar from hearing the ‘11 youth abduction case’ against Admiral of the Fleet Wasantha Karannagoda. <sup>34</sup>

**01 July 2020**

**Rear Admiral D.K.P. Dassanayake summoned to the CoI.**

Rear Admiral Dassanayake appearing before the PCoI said his politically motivated arrest in connection with the abduction and disappearance of 11 youth has hindered several promotions that he could have obtained had he not been indicted, there was a possibility of even being appointed the Navy Commander. He said these individuals who were made respondents to his complaint had also formerly held discussions about his transfer from Navy Headquarters to serve in the Disaster Management Centre for two years and that this too had affected both his profession and reputation as he was forced to perform duties outside of what he was mandated to perform.

Dassanayake said during the period where action was initiated against him in July 2017, he was due to be promoted to the position of a Commodore, but that this was hindered due to the investigations carried out by the CID, despite the statements made by the Attorney General and the Ministry of Law and Order that such investigations should not affect due promotions. Dassanayake was later appointed as a temporary Commodore. He added that the Office on Missing Persons had also sent recommendations to the former Secretary to the Ministry of Defence, Hemasiri Fernando on 17 January 2019

stating that since a case was pending against Dassanayake and therefore should not be promoted.

He added the main evidence that the CID brought against him was that he was the supervising officer of two main suspects of the case, Commander Sumith Ranasinghe and Lieutenant Commander Prasad Hettiarachchi during the period when the incident took place. However, Dassanayake noted that he did not operate as their supervising officer. The Attorney-at-Law who appeared for the Rear Admiral produced a letter from Navy Headquarters which proved that the latter was not the supervising officer during the time of the incident.

Dassanayake further said that Chief Inspector of Police attached to the CID, Nishantha De Silva had given information regarding the investigation in an unlawful manner to Ramanayake prior to the proceedings of the case, adding that the former Director of the CID, Senior Superintendent of Police Shani Abeysekera had also held conversations with Ramanayake with regard to this case.

**03 July 2020**

Testifying before the Commission, Dassanayake said attempts were made to use him as a witness to charge the then Defense Secretary Gotabhaya Rajapaksa and former Navy Commander Wasantha Karannagoda in an abduction case. Dasanayake said that after the attempt failed, he was indicted on false charges.

He also said an investigation team of the Criminal Investigation Department attempted to prove that former Defense Secretary Gotabhaya Rajapaksa and former Navy Commander Wasantha Karannagoda committed war crimes. Dasanayake said he was arrested on false evidence given by former Navy Commander Travis Sinniah.

Chairman of the PCoI, retired Supreme Court Judge, Justice Upali Abeyratne gave instructions to send notice to summon former MPs Ranjan Ramanayake, Dr. Rajitha Senaratne, D.M. Swaminathan, Ranjith Madduma Bandara and Ajith P. Perera, Senior DIGs Ravi Waidyalankara and Ravi Seneviratne, and J.C. Weliamuna PC, named as respondents in the complaint.



<p><b>10 August 2020</b></p>	<p>Former Ministers Ranjith Madduma Bandara, Rajitha Senaratne, Ajith. P. Perera and Ranjan Ramanayake appeared before the CoI.</p>
<p><b>26 August 2020</b></p>	<p>Former Director of the Criminal Investigations Department SSP Shani Abeyssekera and MP Ranjan Ramanayake requested for further time to give evidence before the CoI.</p> <p>Meanwhile, Senior Deputy Inspector General of Police Ravi Seneviratne, who was also named as a respondent to the same complaint as he was present at a meeting held at the Home Affairs Ministry in the presence of politicians including Ramanayake in 2018 where discussions were held pertaining to the hindrances faced in the investigations into abduction and disappearance of 11 youths, appearing before the PCoI, said that irrespective of the fact that politicians were present at said meeting, he spoke of the hindrance based simply on his duties.</p> <p>Dassanayake's counsel said that if there are such hindrances, it has to be presented to Court and if necessary, an opinion should be sought from the Attorney General but that Seneviratne had instead spoken about the case in</p>

	<p>the midst of politicians. Seneviratne, speaking at the meeting had also stated that if Dassanayake remained at the Navy Headquarters where he was based at the time, it would be of hindrance to the investigations, following which Dassanayake was transferred, the counsel noted. Dassanayake remaining in the Navy Headquarters was a hindrance as the witnesses for the same case were also at the same headquarters, Seneviratne noted.</p>
<p><b>15 September 2020</b></p>	<p>Commander R. K. Sumith Ranasinghe testifying before the CoI said that former CID Director Shani Abeysekera, IP Nishantha De Silva, and several other officers presented fabricated evidence to the Attorney General’s Department during the period of the Government of Good Governance.</p> <p>He claimed that his arrest along with several others was the result of a conspiracy carried out by the Criminal Investigations Department that investigated the incident, to defame the Political Leadership that brought an end to the war, locally and internationally, claiming it committed war crimes.</p> <p>Commander R. K. Sumith Ranasinghe said he had investigated an individual who was in the Sri Lanka Navy at the time, known as Lieutenant Commander</p>

	<p>Welagedara after information was received that the latter was involved in smuggling people by boat to Australia. ‘Thereafter he acted with a vengeance against me’, said Ranasinghe. He said that Lieutenant Commander Welagedara was used to fabricate false evidence against him after the Government of Good Governance was elected to power.</p>
<b>8 Dec 2020</b>	<p>The CoI report recommends that the ongoing criminal investigations and prosecutions in several emblematic cases be withdrawn including the case of alleged abductions involving Admiral Wasantha Karannagoda and others, the assassination of MP Nadaraja Raviraj and former MP Joseph Pararajasingam, the death of Wasim Thajudeen, the murder of Lasantha Wickrematunge, the Welikada prison massacre, the disappearance of journalist Prageeth Ekneligoda and the abduction of journalist Keith Noyahr.<sup>35</sup></p>
<b>19 Jan 2021</b>	<p>Colombo Additional Magistrate Rajindra Jayasuriya on Tuesday (19) ordered for retired Major Ajith Prasanna to be released on two surety bails of Rs. 500,000/- each. Ajith Prasanna was remanded for almost a year on the charge of making statements at the media briefing to influence witnesses from the</p>

	<p>prosecution. Retired Major &amp; Attorney-at-Law Ajith Prasanna was granted bail by the Court of Appeal on Wednesday (13) and the bail order was enforced today by the Additional Magistrate. The case will be called up again at the Colombo Additional Magistrate’s Court on the 19th of March 2021.</p> <p>Ajith Prasanna was ordered by the Additional Magistrate to refrain from making any comment to the media on any pending cases in the court, as per the promise he made to the Court of Appeal.</p> <p>In December 2019, the Colombo Additional Magistrate ordered for Ajith Prasanna to be remanded on the charge of making statements to influence witnesses in a case taken up for trial at the Fort Magistrate’s Court.</p> <p>The case was related to the abduction and enforced disappearance of 11 youth from Colombo in 2008/2009.<sup>36</sup></p>
<b>5 March 2021</b>	<p>The Court of Appeal has directed to take up the writ petition filed by former Navy Commander Admiral of the Fleet Wasantha Karannagoda seeking the annulment of the indictment filed against him by the Attorney General in connection with the alleged abduction and disappearance of 11 youths in</p>

	<p>2008 on May 17.</p> <p>The petition was taken up before a bench of Justices Arjuna Obeysekera and Mayadunne Correa today.</p> <p>Additional Solicitor General Ayesha Jinasena on behalf of the Attorney General informed the Court of Appeal today (4) that further investigations are being carried out into the writ petition filed by Karannagoda.</p> <p>After considering the statements made by the Additional Solicitor General, the Court of Appeal adjourned the hearing of the writ petition filed by the former Navy Commander to May 17.</p> <p>The Attorney General has been named as a respondent in the petition filed by the former Navy Commander seeking an interim injunction on the High Court case against him in connection with the abduction, disappearance and murder of 11 youths.</p> <p>The petitioner had sought notice to the respondents in this writ petition and to issue an interim order suspending the hearing of the relevant indictment</p>
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case.

The Court of Appeal issued an interim order on June 25 last year suspending the indictment against Admiral of the Fleet Wasantha Karannagoda, Commander of the Colombo Special High Court, in connection with the abduction, disappearance and murder of 11 youths.

Wasantha Karannagoda says that the Attorney General has filed a case against a group of suspects including himself in connection with the abduction and disappearance of 11 youths in 2008 before a three-judge bench of the Colombo High Court.

Mr. Karannagoda pointed out that the manner in which he was connected to the case was against the law and that there was no evidence against him. Therefore, he has requested the court to issue a writ order to nullify the charge sheet filed against him.

The Appeal Court has issued an interim injunction order preventing Colombo High Court Trial-at-Bar from hearing the case against former Navy Commander Admiral of the Fleet Wasantha Karannagoda.<sup>37</sup>

<b>19 March 2021</b>	<p>Former Chief of the Criminal Investigation Department (CID) Senior DIG Ravi Seneviratne has filed a Fundamental Rights petition in the Supreme Court challenging the recommendations made by the Presidential Commission of Inquiry appointed to probe incidents of political victimization.</p> <p>The petitioner is seeking an order to quash the findings and recommendations of the Commission of Inquiry and the decisions of the Cabinet of Ministers dated 18th January 2021 to implement the recommendations.</p> <p>Through this petition, the former CID Chief is challenging the recommendations of PCoI to name the petitioner as a respondent after a complaint made by former Navy Commander Wasantha Karannagoda and former Navy media spokesman D.K.P. Dassanayake.</p> <p>The Petitioner states that the task to conduct and supervise the investigation on the disappeared 11 young men was assigned to his subordinate officers namely former Director, CID (interdicted) ShaniAbeysekara (SSP) and former Inspector of Police Nishantha Silva together with the investigation officers</p>
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	<p>attached to the (CID). The Petitioner states that the overall investigations were carried out by the officers attached to the CID, primarily as a part of their statutory duty as Police Officers to protect victims and promote offender accountability by consistently enforcing laws and procedures.</p> <p>The Petitioner states that the progress of the investigation carried out by the CID officers about the Disappearance of 11 young men was initially reported by submitting all the evidence revealed through investigation including forensic and scientific evidence, eyewitnesses, criminal evidence, digital evidence, circumstantial evidence and other evidence to the Attorney General and thereafter with the recommendation of the Attorney General.</p> <p>The petitioner stated that the investigation officers including the Petitioner did not deviate from the investigation procedures and did not insist on any undue influence towards any suspects.<sup>38</sup></p>
<p><b>4 Aug 2021</b></p>	<p>The Attorney General's Department has informed that it will not proceed with charges against former Navy commander Admiral of the Fleet Wasantha Karannagoda over an abduction case.</p>



	<p>The Department informed the Colombo High Court trial-at-bar that it will not proceed with the charges in connection to the case filed over the abduction of 11 youths in 2008 and 2009.</p> <p>The Attorney General had filed indictments against Karannagoda and 13 others in connection with the alleged abduction and disappearance of 11 youths.</p> <p>Karannagoda had thereafter filed a writ petition seeking the annulment of the indictment filed against him by the Attorney General.<sup>39</sup></p>
<b>7 Aug 2021</b>	<p>Parents of the Navy-11, the students abducted and most probably killed by Navy personnel in 2008/2009 for ransom, have written to the AG expressing their utter dismay at AG's application for withdrawal of indictment filed in HC against suspect Navy Commander Wasantha Karannagoda.<sup>40</sup></p>
<b>13 Oct 2021</b>	<p>Attorney General Sanjay Rajaratnam, PC, has withdrawn the indictment against wartime Navy Commander the then Vice Admiral Wasantha Karannagoda in respect of the alleged abduction and disappearance of 11</p>

	<p>Tamil youth in 2008.</p> <p>The Court of Appeal permitted the AG to withdraw the indictment against the now Admiral of the Fleet Karannagoda. The AG informed the Court of Appeal that the former Navy Chief wouldn't be prosecuted.<sup>41</sup> Karannagoda requested the Court of Appeal to issue a stay order on the High Court proceedings against him. The Court of Appeal at an earlier hearing issued a stay order until the Attorney General explained his position with regard to the indictment.</p> <p>The Writ Application will be mentioned again on November 3.</p> <p>Romesh de Silva, PC, appeared with Niran Anketell and Sugath Caldera for the petitioner Karannagoda. Dr. Avanthi Perera Senior State Counsel appeared for the Attorney General. The bench comprised Justice Sobitha Rajakaruna and Justice Dhammika Ganepola.</p> <p>The alleged abductions and disappearances came to light after relatives of one of those missing brought the incident to Karannagoda's attention. Subsequent</p>
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	investigations implicated a group of navy personnel, including the Chief Security Officer of the Navy Commander
<b>2 November 2021</b>	Families of the Disappeared held a protest at Hulftsdorp against the exoneration of former Navy commander Wasantha Karannagoda in the Navy 11 case. A ‘confidential report’ on why charges against Karannagoda were dropped is to be presented before court today. <sup>42</sup>
<b>3/ 2 November 2021</b>	<p>The Colombo High Court Trial-at-Bar yesterday rejected a request made by the Attorney General to withdraw the indictment filed against former Navy Commander, Admiral of the Fleet Wasantha Karannagoda</p> <p>When the case was taken up before the Colombo High Court Trial-at-Bar bench comprising Colombo High Court Judges Champa Janaki Rajaratne, Amal Ranaraja and Navaratne Marasinghe, the court said that such a request should be made by the Attorney General in person or in writing under the signature of the Attorney General and the request was rejected on the grounds of “irregularity” as the request had not been made in proper manner.</p>

	<p>Counsel appearing on behalf of the Attorney General, informed court that it hoped to amend the charge sheet in the future.</p> <p>The case is to be taken up again on <b>December 3</b>. On January 24, the Court served indictments on 13 accused including Navy intelligence officials in connection with the abduction, torture, extortion and conspiracy to murder eleven persons in 2008 and 2009.</p> <p>Accordingly, indictments consisting of 667 counts under the Penal Code were served on 13 accused except former Navy Commander Admiral of the Fleet Wasantha Karannagoda.</p> <p>Thirteen accused including Navy officers D.K.P.Dasanayake, Sampath Munasinghe, Sumith Ranasinghe, Dilanka Senaratne, Nalin Prasanna Wickremasuriya, Anton Fernando, Rajapaksha Pathirannehelage Kithsiri, Aruna Thushara Mendis, Kathriarachchilage Gamini alias Ampara Gamini, Chandana Prasad Hettiarachchi alias Navy Sampath, Upul Chaminda alias</p>
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	Annachchi, Nandapriya Hettihendi and Sampath Janaka Kumara alias Podi Kumara were present in Court. <sup>43</sup>
<b>10 Nov 2021</b>	<p>The writ petition filed by parents of the youths who went missing in 2008 seeking an order quashing the decision of the Attorney General to withdraw the indictment filed against Admiral of the Fleet Wasantha Karannagoda was today dismissed by the Court of Appeal.<sup>44</sup></p> <p>The Court of Appeal two-judge-bench comprising Justice Sobhitha Rajakaruna and Justice Dhammika Ganepola observed that the court would not interfere with the Attorney General's Prosecutorial Power. The Court further held that there is no procedural error on the part of the Attorney General's Department.</p> <p>Accordingly, the Court of Appeal decided to dismiss the petition without issuing notices on the respondents.</p> <p>The petitioners state that the decision to withdraw the indictments against former Navy Commander is unreasonable, bias, illegal, unlawful and politically motivated with intention to gain undue advantage and against the</p>

	<p>rules of natural justice.</p> <p>The petitioners state that five persons including Rajiv Naganathan, Vishwanathan Pradeep, Mohammed Dilan, Mohammed Sajith went missing on or around 17th September 2008 where the Petitioners complained to the Police and Human Rights Commission relating to the disappearances.</p> <p>The petitioners state that during the investigations of the Criminal Investigation Division in respect of another crime it was divulged the fact that there is a direct connection with the above disappearances and some navy personnel including former Navy Commander.</p> <p>The petitioners said according to CID investigations some persons including the above victims were abducted and illegally detained in a cell called “Pittu Bambuwa” situated near the Colombo port. The petitioners further said the victims were detained in an illegal prison called “GUN SITE” situated in Sri Lanka Naval and Marine Science Faculty premises of Trincomalee which was under the direct control of the former Navy Commander.</p>
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	<p>The petitioners state that the decision of the Attorney General to withdraw the indictment served on the former Navy Commander is clear abuse of discretionary powers granted by law and liable to be rectified by orders of this Court for the purpose of Administration of Justice.</p> <p>Counsel Nuwan Bopage appeared for the petitioners. Additional Solicitor General Nerin Pulle appeared for the Attorney General.</p>
<b>3 Dec 2021</b>	<p>The case filed against 14 accused including Former Navy Commander &amp; Admiral of the Fleet Wasantha Karannagoda was postponed to the 7th of January by the Colombo Permanent High Court Trial-at-Bar<sup>45</sup></p>
<b>26 January 2022</b>	<p>A special leave to appeal petition filed by the parents of the youths who went missing in 2008 was yesterday fixed for support on July 7 by the Supreme Court.</p> <p>The petitioners are challenging the Court of Appeal's decision to dismiss their writ petition filed over Admiral of the Fleet Wasantha Karannagoda.</p>

	When this special leave to appeal petition came up before Supreme Court three-judge-bench comprising Justice Preethi Padman Surasena, Justice Shiran Goonaratne and Justice Achala Wengappuli, the court was informed that the respondents were yet to receive notices regarding the petition. <sup>46</sup>
<b>6 April 2022</b>	The Court of Appeal on Wednesday directed to hear the writ petition filed by former Navy Commander Admiral of the Fleet Wasantha Karannagoda seeking a stay order on hearing the case filed against him in the Colombo High Court regarding the disappearance of 11 youths in 2008 on June 27. <sup>47</sup>
5. Abduction of Keith Noyahr	
<b>May 2008</b>	Keith Noyahr, the former Deputy Editor of the Nation newspaper was abducted and tortured in May 2008 and later released when appeals were made to former President Mahinda Rajapaksa and Karu Jayasuriya, by the Managing Director of Nation newspaper Krishantha Cooray. <sup>48</sup>



<b>19 Oct 2017</b>	<p>The investigation into the abduction and torture of Keith Noyahr has been concluded by the Criminal Investigation Department.</p> <p>The CID recorded statements from eight suspects, all from the Army Intelligence and zeroed in on the torture chamber in Dompe in the course of the investigation. All involved including Prabhath Bulathwatte, the Major who had taken the torture house belonging to a female companion of his were remanded and bailed out. Extensive records of telephone conversations were obtained by the CID which led to the suspects.</p> <p>The Attorney General's Department is expected to file charges soon.<sup>49</sup></p>
<b>20 Aug 2018</b>	<p>The statement recorded from former President Mahinda Rajapaksa, over the 2008 abduction and assault of journalist Keith Noyahr, was submitted to the Additional Magistrate of Mount Lavinia today. A statement recorded by officers of the Criminal Investigations Department from Keith Noyahr in Australia was also presented to court today.</p>

In his statement, the former President says that he has no recollection of phone calls he had received on the day of Keith Noyahr's abduction.

In his statement, Noyahr notes that while serving as Deputy Editor of The Nation in 2008, he had published a series of articles flagging weaknesses in the government and military, using the pseudonym "Senpathi". He adds that he also drew attention to weaknesses on the part of the Defence Minister, Defence Secretary, the Army and the Police, at the time.

Furthermore, he notes that on a day after these articles were published, while he was travelling towards the University of Colombo, he noticed that he was being followed by Army jeeps and that he had escaped them by entering the university premises. He added that on the same night, an armed group who arrived in a white van had beaten, blindfolded and abducted him.

Noyahr notes that he was beaten throughout the journey in the van and that he was questioned on whether he had any links with the LTTE. Noyahr adds that he was taken to an unknown location, stripped, suspended mid-air and beaten once again. His statement also reads that while he was being assaulted,

	<p>one of the men had received a phone call during which he responded “Ok Sir, Ok Sir” following which the assault stopped. He noted that he was asked to stand up, wash his face and wear his clothes. Noyahr adds that he was then brought to Dehiwala and released.</p> <p>He had then admitted himself to a hospital and after receiving treatment had departed for Australia fearing for his life.</p> <p>Mount Lavinia Additional Magistrate Lochana Abeywickrama Weerasinghe, informed the Senior State Counsel to remind the Defence Secretary to provide the information requested (about the alleged safe house). The court postponed the hearing of the bail application for the 8th suspect Major General Amal Karunaratne to the 27th of August and returned him to remand custody.<sup>50</sup></p>
<b>28 Aug 2018</b>	<p>The Mount Lavinia Magistrate’s Court on Monday (August 27) ordered the CID to record another statement from former Military Intelligence Chief,</p>

Major General Amal Karunasekara, over the 2008 abduction and assault of journalist Keith Noyahr.

The Court issued this order in response to a statement made by Major General Karunasekara's attorney regarding a purported safe house in Baduwatte, Dompe, where Noyahr was reportedly taken. Retired Major General Amal Karunasekara, who is in remand custody over the abduction of Keith Noyahr, was brought to court in an ambulance today (August 27) and was produced before the Mount Lavinia Additional Magistrate Lochana Abeywickrema Weerasinghe.

Senior State Counsel Lakmini Girihagama raised questions once again today on statements made by the suspect regarding the incident. She pointed out that there are issues with the suspect's statement that he does not recall phone calls received from the then defence secretary Gotabaya Rajapaksa.

The Senior State Counsel stated in court that it is problematic when such statements are made by individuals who held such responsible positions and noted that a separate inquiry should be conducted into Major General Karunasekara's professional conduct. Defence Counsel Shehan de Silva made a statement in court today which appeared to indicate that his client was aware of the safe house in Baduwatte, Dompe, during his term as Director of Military Intelligence.

The CID had informed court previously that it was suspected that Keith Noyahr was being held at this safe house. The State council requested the court to record the statement made by the Counsel representing Amal Karunasekara that confirmed his client was aware of this safe house.

While the Defence counsel attempted to say that this was not what he meant, the state counsel clarifying facts stated that the safe house operated under Major Bulathwatta. The counsel added that this was recorded in the statement provided by Major Bulathwatta. The Additional magistrate who considered the facts ordered the CID to record a statement from retired major general

	<p>Amal Karunasekara on the representations made in Court on Monday (August 27).</p> <p>The Additional magistrate also ordered the CID to act according to the Court order if the current Secretary of Defence shows any form of dis-concern in providing the information requested regarding the Safehouse in Baduwatta. The suspect Amal Karunasekara was further remanded until the 10th of September.<sup>51</sup></p>
<b>11 June 2019</b>	<p>The Mount Lavinia Additional Magistrate C.H.G.Liyanage ordered the revoking of bail conditions imposed on former Army Chief of Staff Maj.Gen. (Rtd) Amal Karunasekara and Chandraba Jayasinghe in connection with the abduction of former The Nation Deputy Editor Keith Noyahr.</p>
<b>23 Aug. 2019</b>	<p>Army Intelligence Sergeant Chamika Sumith Kumara arrested over Keith Noyahr case.</p>

<b>12 Sept. 2019</b>	The Attorney General (AG) has urged the Acting Police Chief to investigate the Criminal Investigations Department (CID)'s delayed probe into journalist Keith Noyahr's abduction case.
<b>22 Sept. 2019</b>	The Criminal Investigation Department (CID) is to seek the assistance of the US Federal Bureau of Investigation (FBI) in the probe over the abduction and assault of former Deputy Editor Keith Noyahr.
<b>1 Sept 2020</b>	<p>Testifying before the Presidential Commission of Inquiry appointed to probe into the political victimisation of public officials, Retired Army Staff Sergeant, Somasuriya said that Inspector of Police Nishantha Silva threatened him to say that Journalist Keith Noyahr was abducted and held at a house in Dompe where he was assaulted upon the instructions of former Defence Secretary and incumbent President, Gotabaya Rajapaksa.</p> <p>He added that on an occasion that he was summoned to the Criminal Investigations Department (CID), he was attacked by certain CID officers</p>

following which Silva after having taken Somasiri to his house also questioned his wife. "I was threatened by Silva that if I fail to make such statements, I would lose my pension and that the future of my children will be affected," he said, adding that out of fear of repercussions, he agreed to do so.

Following this undertaking, Somasuriya was taken to the house that he had rented in Dompe where he was forced to agree to everything that was said to him by Silva and that this was videoed.

"Later, I was taken to the Magistrate of the Mount Lavinia Magistrate's Court, Lochana Abeywickrama upon instructions made by Silva to provide statements with regard to the abduction of Noyahr, whereby I told Abeywickrema that I was not involved in such an incident and that I was not instructed by Rajapaksa or Bulathwatte to do so," he added. However, he informed Silva that he acted according to Silva's instructions.<sup>52</sup>



<b>8 Dec 2020</b>	The CoI report recommends that the ongoing criminal investigations and prosecutions in several emblematic cases be withdrawn including the case of alleged abductions involving Admiral Wasantha Karannagoda and others, the assassination of MP Nadaraja Raviraj and former MP Joseph Pararajasingam, the death of Wasim Thajudeen, the murder of Lasantha Wickrematunge, the Welikada prison massacre, the disappearance of journalist Prageeth Ekneligoda and the abduction of journalist Keith Noyahr. <sup>53</sup>
<b>6. Murder of Lasantha Wickramatunge</b>	
<b>8 Jan 2009</b>	Lasantha Wickrematunge was killed by masked assailants in the Sri Lankan capital of Colombo while driving to work. Lasantha was the editor of The Sunday Leader, famous for his political opinion columns and his investigations exposing government corruption and abuses committed during the war. His reporting drew criticism and threats from both President Mahinda Rajapaksa and Secretary of Defense Gotabaya Rajapaksa. In the weeks leading up to his death, Lasantha was so concerned that he would be

	<p>assassinated that he wrote an editorial to be released in the event of his death, stating: “When finally I am killed, it will be the government that kills me.”<sup>54</sup></p>
<p><b>17 Jan 2009</b></p>	<p>The Sunday Leader reports that the initial post-mortem examination, carried out at the Colombo South Hospital in Kalubowila, is inconclusive with regard to the cause of death. The report claims that medical teams have expressed mismatching views with regard to the murder weapon. The report further claims that Wickrematunge’s mobile phone, notebook, and a file with a sheaf of papers that were supposed to have been with him at the time of the murder have gone missing.</p>
<p><b>26 Feb 2010</b></p>	<p>Two suspects, P. Jesudasan and Kandededara Piyawansa, are arrested by the Terrorism Investigation Department over the murder and alleged terrorist activities.</p> <p>A bystander who had stolen Wickrematunge’s phone from the crime scene is also arrested. He is detained for six months and then released.</p>

	<p>Later on, seventeen other army officers are arrested with regard to the murder. However, each suspect was released over the course of three years.</p>
<b>13 Oct 2011</b>	<p>Suspect P. Jesudasan dies of a suspected heart attack in prison.</p>
<b>6 Sept 2013</b>	<p>Second suspect Kandegedara Piyawansa is later released on bail after making a statement to the courts. He is released due to lack of evidence.</p> <p>In between 2012 and 2015, few developments are reported in the murder case of Wickrematunge. In 2014, the Committee to Protect Journalists (CPJ) announces that Sri Lanka ranks fourth in the 2015 Global Impunity Index, which highlights countries “where journalists are slain and the killers go free.”</p>
<b>15 July 2016</b>	<p>The CID arrests an officer of the Directorate of Military Intelligence in connection with the murder. The suspect is charged with abduction of an eye witness, assault, conspiracy, and making death threats.</p>

<b>8 Aug 2016</b>	Mt. Lavinia Magistrate’s Court grants approval to exhume the remains of slain journalist Lasantha Wickrematunge. Special police protection is deployed to Wickrematunge’s grave at the Borella cemetery.
<b>27 Sept 2016</b>	The CID exhumes Wickrematunge’s remains for a new autopsy. The remains are handed over to the Colombo Judicial Medical Officer. Speaking to the BBC, Wickrematunge’s colleague and former Editor of The Sunday Leader, Mandana Ismail Abeywickrema, said:”I had to identify the body – it was one of the most difficult things I have done in my life. To see his remains like this made me angry that we had to wait so long for justice for him. I don’t know why still they have not questioned people who were in charge of the defence establishment at that time.” <sup>55</sup>
<b>4 April 2019</b>	Civil case filed in US over murder of Lasantha Wickramatunga by daughter Ahimsa Wickramatunga.

<b>21 October 2019</b>	The case filed against SLPP Presidential candidate Gotabhaya Rajapaksa by slain journalist Lasantha Wickrematunga's daughter Ahimsa has been denied and dismissed by the California District Court in the U.S.
<b>13 November 2019</b>	Ahimsa Wickrematunge and her legal team filed a notice of appeal to the Ninth Circuit Court of Appeals, contesting the United States District Court's decision to grant former Sri Lankan Secretary of Defense Gotabaya Rajapaksa immunity for suit related to the assassination of prominent Sri Lankan journalist Lasantha Wickrematunge.
<b>16 Nov. 2019</b>	Gotabaya Rajapaksa was elected President of Sri Lanka. This is the first time a foreign head of state has been elected while an appeal was pending against them in U.S. courts. Rajapaksa is now entitled to head of state immunity.
<b>20 Dec 2019</b>	Ahimsa Wickrematunge and her legal team filed a motion to dismiss the appeal and vacate the underlying decision under the <i>Munsingwear</i> doctrine,

	which allows the lower court's decision to be vacated when a case becomes moot in the middle of an appeal.
<b>15 February 2020</b>	The travel ban imposed on former deputy inspector general in charge of Colombo south division Prasanna Nanayakkara in connection to allegedly covering up evidence on the assassination of Journalist Lasantha Wickrematunga has been lifted by Mount Lavinia Magistrate's Court.
<b>21 February 2020</b>	Ahimsa Wickrematunge has filed a complaint against Senior Superintendent of Police W.Thilakaratna for attempting to aid Udayanga Weerathunga to escape arrest, at the Commission to Investigate Allegations of Bribery and Corruption.
<b>02 March 2020</b>	The Ninth Circuit Court of Appeals granted Ahimsa Wickrematunge's request to dismiss her case without prejudice, as Gotabhaya Rajapaksa's accession to the presidency of Sri Lanka last November gave him immunity from suits in US courts for so long as he remains president. The Ninth

	<p>Circuit's decision clears the way for future litigation against Rajapaksa once he no longer enjoys immunity as a head of state.</p>
<p><b>18 June 2020</b></p>	<p>Ahimsa Wickrematunge, the daughter of late journalist and Editor Lasantha Wickrematunge, appealed to the Police Commission to block the appointment of SSP A.R.P.J. Alwis as Director of the Criminal Investigation Department (CID). Wickrematunge releasing a statement said that Alwis was ordered to be arrested in connection to her father's murder and he was unsuited to such a high office.</p>
<p><b>22 June 2020</b></p>	<p>The Acting Inspector General of Police (IGP) is to submit a report on the recently appointed Criminal Investigation Division (CID) Director Senior Superintendent of Police (SSP) A.R.P.J. Alwis, as directed by the National Police Commission (NPC).<sup>56</sup></p>

<p><b>28 October 2020</b></p>	<p>The Criminal Investigations Department had misled the court with regard to the investigations on the assassination of journalist Lasantha Wickrematunge, said Prem Ananda Udalgama, a Former Military Intelligence Officer, in his testimony to the Presidential Commission of Inquiry probing incidents of Political Victimization.<sup>57</sup></p>
<p><b>4 December 2020</b></p>	<p>The case filed over the homicide of the late Senior Journalist Lasantha Wickrematunge was postponed to the 04th of June 2021 by Mount Lavinia Magistrate. Though officers from the Criminal Investigations Department were present in the court, there was no representation from the Attorney General's Department.</p>
<p><b>08 Jan 2021</b></p>	<p>The daughter of Lasantha Wickrematunge filed a complaint with the UN Human Rights Committee seeking its assistance in probing the killing of her father.</p>



<p><b>10 March 2021</b></p>	<p>Ahimsa Wickrematunge responded to the National Police Commission over the suppression of evidence in her father Lasantha Wickrematunge’s murder investigation.<sup>58</sup></p>
<p><b>3 June 2021</b></p>	<p>The Government’s decision to appoint a former war-time police chief as a member of the independent Office of Missing Persons (OMP) has drawn sharp criticism from human rights groups and victims.</p> <p>On 20 May, the Parliamentary Council recommended former IGP Jayantha Wickramaratne to fill a vacancy in the membership of the OMP, a transitional justice mechanism set up to investigate enforced disappearances in Sri Lanka and recommend reparations and compensation to victims of the crime and their families.</p> <p>Wickramaratne’s appointment has alarmed activists and victims who expressed concern that his presence will undermine the work of the OMP and put witnesses and complainants at risk of reprisal.</p>

Sri Lanka has one of the largest caseloads of enforced disappearances in the world, a legacy of recurrent political violence and a long-established pattern using the abduction of critics and dissidents as a tool of repression. The Office of Missing Persons was established for purposes of seeking the truth about tens of thousands of missing people, investigating their disappearance and determining their fate.

Tweeting about the appointment on Sunday (30), Ahimsa Wickrematunge, daughter of slain Sunday Leader Editor Lasantha Wickrematunge said the appointment “proved President Gotabaya Rajapaksa’s contempt for victims”.

The slain journalist’s daughter said that as IGP in 2009, Wickramaratne had ‘derailed’ investigations into her father’s murder.

“Heartbreaking for victims of enforced disappearances Sandya Ekneligoda and others still seeking answers,” Ahimsa Wickrematunge tweeted.

As IGP in 2009, Wickramaratne supervised the investigation into the daylight assassination of The Sunday Leader Editor Lasantha Wickrematunge. At least

	<p>two senior police officers have provided statements to the CID, claiming that Wickramaratne allegedly issued directives to confiscate and destroy the murdered journalist's notebook. CID investigators at the time believed the notebook which was found inside Lasantha Wickrematunge's car after his murder, could provide vital evidence about his killers. In March 2018, Wickramaratne obtained an interim order preventing his arrest in the Lasantha Wickrematunge murder case from the Supreme Court.<sup>59</sup></p>
<p><b>19 September 2022</b></p>	<p>The People's Tribunal on the Murder of Journalists presented its verdict declaring that the Governments of Mexico, Sri Lanka and Syria are guilty of all human rights violations brought against them. The Permanent People's Tribunal is an internationally recognised people's tribunal, which according to its Statute, operates independently from state authorities on the basis of the framework defined in the Universal Declaration of the Rights of Peoples. The PPT says that in the case of the murder of journalist Lasantha Wickrematunge, the Government, through their acts and omissions</p>

	committed violations of the right to life, the right to freedom of expression and the right to freedom from discrimination based on political opinion. <sup>60</sup>
7. Disappearance of Prageeth Ekanligoda	
<b>27 August 2009</b>	Ekanligoda is abducted by a group who arrived in a white van. He is returned the following day
<b>24 January 2010</b>	Prageeth Ekanligoda, Lanka e news cartoonist and journalist is abducted. The abduction took place two days before the 2010 presidential election, in which incumbent Mahinda Rajapaksa was contesting his former Army Commander, General Sarath Fonseka for the Presidency. <sup>61</sup>

<p><b>25 January 2010</b></p>	<p>Ekneligoda's wife, Sandya Ekneligoda, complained regarding Ekneligoda's disappearance to the Homagama Police, a day after his disappearance. However, the Homagama police initially refused to take down the complaint. The police began investigations only two weeks after the initial complaint was made.<sup>62</sup></p>
<p><b>Background</b></p>	<p>According to evidence the CID has pieced together and reported to court so far, the tale of how an elaborate abduction trap set for Prageeth Ekneligoda begins in the year 2001, when the journalist travelled to Madhu, Mannar with a Tamil politician who remains a Member of Parliament to date. In Madhu, the politician introduced Ekneligoda to an LTTE cadre known as 'Thavendran' an alias for Sumathipala Sureshkumar. Ekneligoda was in regular contact with the LTTE operative, visiting Verugal in Batticaloa at least twice to meet with Sureshkumar following the 2004 tsunami.</p> <p>Years later, Sureshkumar surrendered in the Wannu and was flipped by the army and recruited as an army intelligence operative. In the LTTE cadre's phone book, military intelligence officials who captured Sureshkumar found a</p>

number for the journalist Prageeth Ekneligoda. Sureshkumar was instructed by his military intelligence handlers to continue to remain in contact with Ekneligoda. The MI operative followed orders, regularly communicating with Prageeth Ekneligoda from the Giritale army camp.

During Ekneligoda's abduction in 2010, Sureshkumar's military intelligence handler was Sergeant Ranbanda.

On January 24, 2010 the date Ekneligoda was last seen by family and friends, Commanding Officer of the Giritale Army camp Colonel Shammi Kumararatne – a commissioned officer attached to the Directorate of Military Intelligence of the Sri Lanka Army – called Sergeant Ranbanda and asked to speak to Sureshkumar. In a confession under oath before the Homagama Magistrate, Sureshkumar said Col. Kumararatne had told Sureshkumar that on the orders of Secretary of Defence Gotabaya Rajapaksa, they were to facilitate the abduction of Prageeth Ekneligoda by tricking the journalist into a meeting with an undercover military intelligence operative, Corporal Priyanthakumara Rajapakse Nadan. Once the call from Col. Kumararatne

ended, under the supervision of Sgt Ranbanda, Sureshkumar contacted Ekneligoda to set the trap. The same day, a team led by Corporal Nadan left Giritale for Colombo. A series of phone calls between Ekneligoda and Corporal Nadan facilitated the abduction. Ekneligoda's contact Sureshkumar never heard from or saw the journalist again.

Sureshkumar's confession was corroborated by a matching statement by his handler, Sgt Ranbanda before the Homagama Magistrate. Sgt Ranbanda's confession helped investigators to pick up the next sequence of the abduction.

On January 25, 2010, once Prageeth Ekneligoda had arrived at the Giritale Army camp, Sgt Ranbanda was given orders from his commanding officer Col. Kumararatne, conveyed through a Corporal Rupasena, to interrogate Ekneligoda about several obscene cartoons he had drawn of the then President Mahinda Rajapaksa and his brother, the Defence Secretary.

Sgt Ranbanda interrogated the journalist, who admitted to being the artist behind the cartoons which he said had been drawn to expose the alleged

corruption and abuse of power by the then ruling family. The interrogation was observed in Giritale by Corporal Rupasena and Corporal Nadan. According to Sgt Ranbanda's confession, the two corporals left the interrogation room for a while and returned claiming that they had orders from Col. Kumararatne to take Ekneligoda away. Sgt Ranbanda told the Magistrate he never saw Ekneligoda again.

The CID has yet to gain access to the two confessions given to the Magistrate.

Crucially, mobile telephone records provided by telecom companies have helped investigators to corroborate claims made by both Sgt Ranbanda and Sureshkumar, specifically pointing to their locations, activities and movements from January 24-25, 2010.

When investigators questioned Col Kumararatne, the highest ranking military intelligence official arrested in connection with the Ekneligoda abduction, he admitted to travelling to Colombo from Giritale on January 24, 2010 and bringing Ekneligoda back to Giritale the next day. The Commanding officer



	<p>of the Giritale camp, however, denies that the journalist was abducted, but claims he had wished to travel to Giritale to meet his contact Sureshkumar.</p> <p>Col. Kumararatne told investigators that once they arrived at Giritale, Ekneligoda had been handed over to Sgt Ranbanda's custody, and claimed he had never seen the journalist again.</p> <p>Soon after Col. Kumararatne made this statement, he was arrested by the CID.</p> <p>Mobile phone records have helped to corroborate that Col. Kumararatne, accompanied by his driver, Corporal Gamage and his security officer Corporal Rupasena had travelled to Colombo on January 24, 2010 and returned to the Giritale army camp several hours later.</p> <p>Corporal Nadan, who, investigations revealed, had travelled to Colombo from Giritale and back to the North Central Province army camp with the journalist, has claimed to have no recollection of the events. However,</p>
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telephone records analysed by the CID have confirmed phone calls made between Nadan and Ekneligoda on January 24, 2010.

Once Ekneligoda was taken away from the interrogation room, where the journalist was being questioned by Sgt Ranbanda, there are no more witnesses who can testify to having seen or heard from the journalist again. But investigations found that Colonel Shammi Kumararatne, accompanied by Corporals Gamage, Gunaratne and Rupasena had travelled from the Giritale Army camp on the afternoon of January 25, 2010 to Akkaraipattu, in the east coast. They remained there for nearly 24 hours, returning to Giritale only on January 26, 2010.

All four suspects strongly deny having travelled to Akkaraipattu. Denials notwithstanding, investigators have mobile phone records that place Col Kumararatne and his corporals in Akkaraipattu from January 25-26, 2010. The CID has also found records from an obscure army camp in Akkaraipattu which indicated that the vehicle bearing licence plate ARMY-48597 had stopped for refueling inside the camp on January 26, 2010.

	<p>The driver of the vehicle is listed as Corporal Gamage, who served as Colonel Kumararatne's driver. The vehicle bearing the ARMY-48597 plate number was Col. Kumararatne's official vehicle, allocated to him by the Sri Lanka Army. No trace of Prageeth Ekneligoda has ever been recovered in Giritale or Akkaraipattu by CID sleuths so far. Nine years after the journalist's abduction, CID investigators believe Ekneligoda was murdered by the suspects in Akkaraipattu, and his body disposed of in the same Eastern Province town.</p>
<b>19 February 2010</b>	<p>(Habeas Corpus, CA) Sandya and their two children Bandara Ekneligoda and Sooriya Ekneligoda filed a habeas corpus petition in the Court of Appeal. DIG Nandana Munasinghe, Homagama Police OIC IGP Mahinda Balasooriya, the Attorney General and Prageeth Ekneligoda were cited as respondents. The petition sought a writ order from the court directing the Police to produce Ekneligoda before the Court of Appeal. Chrishmal Waranasuriya appeared for the petitioners while the then Additional Solicitor</p>

	General (ASG) Shavindra Fernando with State Counsel (SC) Shamindra Wickrama appeared for the State. <sup>63</sup>
<b>23 March 2010</b>	Reporters Without Borders in an appeal to the then President Mahinda Rajapaksa requested the release of the results of the police investigation into Ekneligoda's disappearance <sup>64</sup>
<b>14 December 2010</b>	(Habeas Corpus, CA) The Attorney General informed the Court of Appeal that the Colombo Crimes Division of the Police has begun an investigation into the disappearance of Ekneligoda. The Attorney General was called to present objections with regard to the petition. However, the State requested further time on this day. The judges of the Court of Appeal emphasised the importance of the trial and advised the State to present objections to the petition on the next court date.

<b>25 June 2011</b>	(Habeas Corpus, CA) The habeas corpus petition was taken up before Justice D.S.C. Lekamwasam and fixed for argument on 23 of August 2011
<b>23 August 2011</b>	(Habeas Corpus, CA) When the habeas corpus application was taken up, the Court of Appeal directed the Homagama Magistrate to give priority and inquire into the complaint regarding the disappearance of Ekneligoda as speedily as possible and to report to the Court of Appeal
<b>9 November 2011</b>	Former Attorney General Mohan Peiris made a statement at the UN Committee Against Torture in Geneva that Ekneligoda was alive overseas <sup>65</sup>
<b>24 April 2012</b>	(Habeas Corpus, CA) The Court of Appeal granted more time to the Homagama Magistrate to conduct investigations into the disappearance of Ekneligoda. It was presented before the Court that the Homagama Magistrate is currently conducting an investigation into the incident and will give a decision on 17 of May on whether or not to call upon former Attorney

	General Mohan Peiris to give evidence in the case. Therefore, the Court of Appeal decided to call the petition once again on 31 May 2012. <sup>66</sup>
<b>26 March 2012</b>	(Homagama MC) Homagama Magistrate T.G.S.A. Perera reserved order for 17 of May the decision as to whether or not to call former Attorney General Mohan Peiris as a witness. The Magistrate reserved the order after the prosecution challenged the validity of the transcript copy of the statement made by the former Attorney General in Geneva in 2011. Counsel for the complainant Sandya Ekneligoda also moved the court to call a UN representative, to ascertain the validity of the document, if it was not admissible
<b>17 May 2012</b>	(Homagama MC) The Magistrate's Court of Homagama issued an order to summon Mohan Peiris for testimony regarding a statement he made in November 2011.

<b>5 June 2012</b>	(Homagama MC) Giving a statement before Homagama Magistrate's Court, Mohan Peiris stated that he did not know much information regarding the case and that he does not remember which government department gave him information that Ekneligoda was alive.
<b>23 December 2012</b>	(Habeas Corpus, CA) The Court of Appeal decided to take up the habeas corpus case of Ekneligoda after the Magistrate's Court inquiry was concluded. However, Counsel Chrishmal Warnasuriya, appearing for Sandya informed the Court that if any problems or issues arose during the magisterial inquiry, he would raise the issues before the Court of Appeal.
<b>5 June 2013</b>	UPFA parliamentarian Arundhika Fernando told the parliament today that Ekneligoda is living in France. He claimed he had met Mr. Ekneligoda together with a onetime Sri Lankan journalist Manjula Wediwardena. He claimed that the cartoonist had shaved his head and was in disguise.

A private TV channel on Friday night featured Mr. Fernando in a programme where he repeated the same claims. He said he was a good friend of Mr. Wediwardena. In the MP's presence, the TV channel telephoned Mr. Wediwardena in France. "I do not know Mr. Fernando at all. I have never met him," Mr. Wediwardena replied.<sup>67</sup>

Earlier Chief Justice Mohan Peiris, in his capacity as presidential advisor, told the UNHRC that Ekanligoda was residing abroad.

Thereafter giving evidence before court after he was summoned, regarding his knowledge of the whereabouts of Ekneligoda, the former Attorney General said "God only knows" failing to provide specifics.<sup>68</sup>

The French embassy denied the claims that missing journalist Ekneligoda is living in France.



<b>16 July 2013</b>	UPFA MP Arundika Fernando giving evidence at the Homagama Magistrate's Court revealed that JVP MP Sunil Handunetti had told him that Ekneligoda was alive and living in Belgium
<b>8 January 2014</b>	Homagama Magistrate Y.R.C. Nelumdeniya issued a warrant for former Officer in Charge (OIC) of the Homagama Police, Charith Jayasundera, as he had failed to appear in court to testify
<b>August 2015</b>	<p>11 Military Intelligence officials arrested in connection with the crime were arrested on charges of murder, abduction in order to murder and conspiracy to murder.</p> <p>Col. Shammi Kumararatne, Commissioned officer of the SLA, Directorate of MI</p> <p>Corporals- Prasad Gamage, Kanishka Gunaratne, Priyanthakumara Nadan, Ravindra Rupasena, Chaminda Kumara Abeyratne, Dilanjan Upasena</p>

	<p>Sergeants- Ayyasami Balasubramaniam, Ranbanda</p> <p>Sumapthipala Sureshkumar</p> <p>Thambipillai Thadis- released on bail by Avissawella High Court (paramilitary operative under control of Directorate of MI)</p> <p><b>7 August-</b> Two former LTTE cadres Kanapathipillai Suresh alias Satya Master and Sumathipalan Suresh alias Nagulan were taken into custody by the CID. Information received from them led to several army officials being identified as being connected in the disappearance</p> <p><b>9 August-</b> Sergeant Major Ranbanda, alleged to be involved in the abduction, was arrested by the CID at Kurunegala</p> <p><b>13 August-</b> Sergeant Major Ranbanda confessed that he interrogated Ekneligoda at the Girithale Army camp. He had questioned Ekneligoda on a publication titled “the family tree” (pawul gaha) and his alleged affiliations with former Army Commander Field Marshal Sarath Fonseka, Sergeant Major Ranbanda further confessed that on the third day Ekneligoda was taken away</p>
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	<p>by a Major temporarily promoted to Colonel. This particular Colonel was acting as the second in command of the Camp at the time.</p> <p><b>24 August-</b> Lieutenant Colonel Siriwardena and three personnel were arrested. Amongst the arrested were Lieutenant Colonel Kumararatne who was in charge of the Giritale army camp, Staff Sergeant Rajapakse and Corporal Jayalath</p> <p><b>25 August-</b> Military Intelligence Officers Priyantha Kumara and Ravindra Rupasinghe were arrested.</p> <p><b>2015-</b> The Inspector General of Police (IGP) ordered a fresh investigation into Ekneligoda's disappearance<sup>69</sup></p>
<p><b>12 September 2015</b></p>	<p>Army Spokesperson Brigadier Jayantha Jayaweera in a statement informed that the Army would extend its fullest support in relation to the disappearance of Ekneligoda</p>

<b>28 September 2015</b>	(Homagama MC) The Homagama Magistrate's Court granted permission to the CID to enter the Giritale Army Camp to conduct further investigations
<b>6 October 2015</b>	The CID on the advice of the Attorney General visited the Giritale Army Camp to conduct further investigations over the disappearance of Ekneligoda. The CID is said to have made observations where Ekneligoda was alleged to have been kept and interrogated at the Giritale camp
<b>19 October 2015</b>	(Habeas Corpus, CA) The Court of Appeal bench comprising of Justices Vijith K Malalgoda and H.C.J. Madawala issued an order directing the Homagama Magistrates to summon Army Commander A.W.J.C de Silva and the Director of Military Intelligence Corps and the other officers to inquire into the disappearance. The Court further granted permission to include these army officers as added respondents in the habeas corpus application and issued notice on them returnable for the 30 of October. Sunil Watagala, the lawyer representing the interests of Ekneligoda, also informed the court that

	recent investigations have revealed that the abduction of Ekneligoda was done with the knowledge of certain army officials.
<b>30 October 2015</b>	(Habeas Corpus, CA) The Court of Appeal issued an order to suspend its previous order issued on 19 of October directing the Homagama Magistrate to summon Army Commander A.W.J.C. de Silva, the Director of Military Intelligence Corps and other officers to record evidence. The Army Commander and Director of Military Intelligence who had been newly named as the respondents in the habeas corpus petition sought time to file objections. Accordingly, the Court of Appeal temporarily suspended the magisterial inquiry into the missing journalist until objections were filed by the respondents. The Bench composed of Justices Vijith K. Malalgoda and H.C.J. Madawala permitted them to file objections before 8 December.

<p><b>22 December 2015</b></p>	<p>Former President Mahinda Rajapaksa visited the prison hospital in Welikada to meet five army personnel arrested for the involvement in the abduction of Ekneligoda</p>
<p><b>11 January 2016</b></p>	<p>(Homagama MC) When the case was taken up before the Homagama Magistrate, the CID complaint to Magistrate Ranga Dissanayake that the Army was not cooperating with the investigation. The then Senior State Counsel (SSC) Dileepa Peiris who appeared on behalf of the Attorney General further submitted to the Court that because the Army had not fully cooperated with the investigations, the prosecutors have not been able to receive vital administrative material pertaining to the investigations. The Magistrate observed that if the Army did not cooperate with the investigation in contravention to the Court order, the responsible parties could be dealt with under Section 185 of the Penal Code for disobedience of an order duly promulgated by a public servant</p>

<b>13 January 2016</b>	(Homagama MC) The Military Intelligence Corps camp at Giritale was sealed by Army Commander Chrisantha de Silva to provide conditions conducive to the investigations. Army spokesperson Brigadier Jayanath Jayaweera stated that a team of military police has been deployed to the Giritale Army Camp in order to examine certain documents which have been requested by the court over Ekneligoda's disappearance
<b>25 January 2016</b>	(Homagama MC) The General Secretary of the Bodu Bala Sena (BBS) organisation, Galagoda Aththe Gnanasara Thero behaved in an unruly manner during the hearing of the Ekneligoda case in Homagama Magistrate's Court. Gnanasara Thero reportedly attempted to intervene to speak on behalf of military personnel being investigated in connection with the disappearance. The Magistrate had refused to permit the intervention since the monk was not a party to the case. The monk had then raised his voice inside the courtroom in the presence of the Magistrate and officials from the AG's Department. Subsequent to this he also threatened Sandya Ekneligoda in the Homagama Magistrate's Court premises on the same day

<p><b>26 January 2016</b></p>	<p>(Homagama MC) Gnanasara Thera was arrested for threatening Sandya Ekneligoda in the Homagama Magistrate’s Court Premises<sup>70</sup></p>
<p><b>9 February 2016</b></p>	<p>(Homagama MC) The CID officials informed the Homagama Magistrate that they received evidence to the effect that Ekneligoda who had been detained at the Giritale Army camp, was blindfolded and taken to a location in Akkaraipattu where he was subsequently killed. The then Superintendent of Police (SP) of the CID Shani Abeyssekera submitting a further report told the court that the investigators have received evidence that suspects Lieutenant Colonel Arjuna Kumararatne, Ravindra Rupasinghe, and Sergeant Kanishka Gunaratne were involved in the abduction of Ekneligoda. It was further revealed that their telephone conversations had confirmed that the suspects had taken Ekneligoda to Akkaraipattu.</p>
<p><b>16 February 2016</b></p>	<p>(Homagama MC) The two former LTTE cadres arrested in connection with the disappearance gave statements as State witnesses to the Homagama Magistrate Ranga Dissanayake. The CID investigations further revealed that</p>



	the SIM of the telephone used during the abduction had been bought by producing the identity cards prepared for one of the two former LTTE cadres <sup>71</sup>
<b>24 February 2016</b>	(Homagama MC) It was reported to the Homagama Magistrate's Court that the CID received a voice recording suspected to be the conspiracy discussion of the Ekneligoda abduction. SP Shani Abeysekera informed the court that the first conspiracy meeting to kill Ekneligoda had taken place on 27 August 2008 and that the second suspect in the case had participated in that first meeting. Nine Army Intelligence suspects were also produced before the court and further remanded till 8 of March
<b>8 March 2016</b>	(Homagama MC) The Homagama Magistrate Ranga Dissanayake ordered the Army Commander to hand over all documents belonging to the Sri Lanka Army in connection with the investigations into the abduction of Ekneligoda. The Army Commander was also ordered not to destroy the documents maintained at Giritala Army camp where Ekneligoda was suspected to have

	<p>been detained. SP Shani Abeysekera informed the court that a proper investigation had not taken place with regard to the incident till 2015. He said with the CID taking over investigations, evidence is surfacing that Ekneligoda had been murdered. The Magistrate ordered police to expedite the investigations into the Ekneligoda case and ordered to further remand the suspects</p>
<b>05 April 2016</b>	<p>(Homagama MC) SP Shani Abeysekera of the CID informed the Homagama Magistrate that the ninth suspect who was remanded over the abduction of Ekneligoda, has changed his signature. He further mentioned that they have received information that Ekneligoda had been taken to a place in Akkaraipattu in January 2010 and the suspects have obtained fuel from a filling station belonging to the Sri Lanka Army. He informed Court that the signature was found from documents of the Sri Lanka Army filling station</p>
<b>23 May 2016</b>	<p>(Homagama MC) The Homagama Magistrate Ranga Dissanayake further remanded seven suspects taken into custody in connection with the abduction</p>

	<p>and disappearance of Ekneligoda. SP Shani Abeyssekera, making a statement before the court, stated that a report obtained from the Army Commander giving details of the soldiers who visited the Akkaraipattu army camp and left on 25 January 2010 had gone missing. He also said a statement had been obtained from Captain Wickremesinghe, who was in charge of the camp on the day in question and that he had identified some of the signatures on the attendance register on the 26 January 2010. The Magistrate ordered the CID to conduct further investigations and submit a report to court on 7 June.</p>
<b>27 May 2016</b>	<p>(Homagama MC) Homagama Magistrate Ranga Dissanayake granted bail to the second suspect Lieutenant Colonel Prabodha Siriwardena. He was released on cash bail of Rs 2 million and surety bail of Rs 6 million and additionally was subjected to a foreign travel ban and ordered to appear before the CID every Sunday</p>
<b>21 June 2016</b>	<p>(Homagama MC) The Sri Lanka Army Headquarters stated that two courts of inquiry have been established to locate the documentation believed to have</p>

	been misplaced during investigations into the killings of Journalists Lasantha Wickrematunge and Prageeth Ekeneligoda
<b>24 August 2016</b>	(Homagama MC) The CID informed the Homagama Magistrates' Court that Ekeneligoda had no links to the LTTE neither had he funded them nor was there any legal action taken against him for terrorist activities
<b>6 September 2016</b>	(Homagama MC) SSC Dileepa Peiris appearing on behalf of the Attorney General's Department informed the Homagama Magistrate Ranga Dissanayake that the CID investigations had revealed that Sergeant Premananda Udalgama, who is in remand on charges in the murder of Sunday Leader Editor Lasantha Wickrematunge, guided the team in Ekeneligoda's abduction. SSC Peiris informed Court that on two occasions, the missing journalist Ekeneligoda was subjected to abduction; once in August 2009 and once in January 2010. He submitted to Court that investigations

	pertaining to telephone conversations had revealed that Sergeant Udalagama was allegedly involved in coordinating these two incidents.
<b>19 September 2016</b>	Four military intelligence officers arrested in connection with the disappearance were granted bail by the Avissawella High Court. The High Court released them on cash bail of Rs.500,000 each and two personal sureties of Rs. 3 million. The suspects were also ordered to appear before the CID every Sunday <sup>72</sup>
<b>12 October 2016</b>	(Habeas Corpus, CA) The Court of Appeal bench comprising Justice Kumuduni Wickremasinghe and Justice Lalith Jayasuriya decided to refer the habeas corpus petition filed by Sandya and her two sons before a bench comprising the President of the Court of Appeal on 20 October
<b>23 October 2016</b>	The first suspect Army Intelligence Officers Lieutenant Colonel Shammi Arjuna Kumararatne and third suspect Staff Sergeant Rajapaksa Mudiyanseelage Priyantha Kumara Rajapaksa alias Nathan were granted bail by

	<p>the Avissawella High Court Judge Amal Thiakarathna. The suspects were bailed out on a cash bail of Rs. 1.5 million and two sureties of Rs 3 million each. It was reported that the Attorney General's Department objected to bail being granted because there was clear evidence to testify to their direct involvement in the abduction and illegal detention of Ekneligoda.</p>
<p><b>8 November 2016</b></p>	<p>The Awisawella High Courts granted bail to the last two remaining military intelligence officers in remand custody in connection with the disappearance of Ekneligoda. The High Court Judge Amal Thilakarathna released the fourth and fifth suspects sergeant Major Wadugedara Winnie Nilanjan and Corporal Senevirathne Mudiyansele Ravindra Rupasena on a cash bail of Rs. 1 million and two sureties of Rs. 3 million.</p>
<p><b>23 January 2017</b></p>	<p>(Habeas Corpus, CA) The Court of Appeal decided to "lay by" (pause) the habeas corpus petition filed by Sandya. However, the Court of Appeal</p>

	directed the Magistrate's Court to go ahead with the inquiry into Ekneligoda's disappearance.
<b>January 2018</b>	Sandya handed over a letter to Army Commander Lieutenant General Mahesh Senanayake requesting his assistance in the probe into the disappearance of her husband. In the letter, Sandya noted that it has been eight years since her husband had disappeared on 24 January 2010, but that she had received little or no help in tracing what had happened to Ekneligoda. She accused the system of favouring the guilty while continuously penalising the victims
<b>14 June 2018</b>	(Homagama MC) Gnanasara Thera was found guilty of threatening Sandya inside the Homagama Magistrate's court premises. Homagama Magistrate Udesh Ranatunga delivering the judgement sentenced him to one year's rigorous imprisonment to be ended in 6 months and a fine of Rs.3,000. The Thera was also ordered to pay compensation of Rs. 50,000

<b>15 June 2018</b>	Lawyers for Gnanasara Thera filed an appeal requesting the Thera to be acquitted and released
<b>25 June 2018</b>	Sandya Ekneligoda filed a complaint to the CID that she is being threatened and harassed via social media since Gnanasara Thera was jailed
<b>21 September 2018</b>	(Homagama MC)The CID arrested the Lieutenant Colonel of the Army Intelligence Unit Erantha Peiris when he arrived at the CID to record a statement. He was arrested on two charges: for the involvement in the abduction and release of Ekneligoda on 8 August 2009 and for the abduction and disappearance of Ekneligoda since the 24th of January 2010. Erantha Peiris was produced before the Homagama Magistrate’s Court on the following day and was further remanded until 28 of September



<b>30 September 2018</b>	Sandya speaking at a media conference vowed to launch a series of protests for 60 days to show her discontent against the government's attempt to hold up investigations into his case.
<b>18 November 2018</b>	Inspector of Police (IP) Nishantha Silva of the CID who was the lead investigator in high profile cases such as the murder of Lasantha Wickrematunge and the disappearance of Ekneligoda was transferred with immediate effect to the Negombo division on service requirements. IGP Pujith Jayasundera is reported to have ordered the transfer
<b>20 November 2018</b>	Sri Lankan police chief cancelled his decision to transfer IP Nishantha Silva after the National Police Commission sought a report on the transfer
<b>December 2018</b>	It was reported that the CID is to seek the advice of the Attorney General to file legal action against military intelligence officers that stand accused in the abduction and disappearance of Ekneligoda

<p><b>24 January 2019</b></p>	<p>The day marks the ninth anniversary of the kidnapping of Ekneligoda. Sandya staged a sit-in protest in front of the President's office, demanding his administration bring to justice the perpetrators responsible for her husband's disappearance nine years ago</p>
<p><b>29 January 2019</b></p>	<p>Sandya in a letter written to President Maithripala Sirisena requested not to grant a presidential pardon to General Secretary of the BBC Gnanasara Thero, who is serving a 6 year prison sentence for contempt of court. Sandya in her letter pointed out that since the contempt of court charge was related to the case of her husband's disappearance, pardoning the Thera would exert undue influence on the case and other related cases<sup>73</sup></p>
<p><b>8 February 2019</b></p>	<p>Considering the appeal filed by Gnanasara Thera, the Homagama High Court judge Amal Ranaraj suspended the sentence of 6 months rigorous imprisonment for a period of five years. The judge also upheld the guilty verdict against Gnanasara Thera delivered by the Homagama Magistrate's</p>

	<p>Court. The Thero is currently serving a six-year jail term after being convicted of contempt of court.<sup>74</sup></p>
<b>23 May 2019</b>	<p>President pardons Bodu Bala Sena (BBS) General Secretary Galagoda Aththe Gnanasara</p>
<b>25 May 2019</b>	<p>Sandya Ekneligoda, the wife of missing journalist Prageeth Ekneligoda, writes to Prime Minister Ranil Wickremesinghe requesting for security for herself and her children after the release of Bodu Bala Sena (BBS) General Secretary Galagoda Aththe Gnanasara</p>
<b>24 June 2019</b>	<p>Sandya Ekneligoda filed a fundamental rights petition against the decision to release Galagoda Aththe Gnanasara on a presidential pardon.</p>

<b>10 Sept 2019</b>	The Supreme Court ordered to hear two petitions filed by Sandya Ekneligoda and Centre for Policy Alternatives against President Maithripala Sirisena's decision to pardon Galagoda Aththe Gnanasara Thero on 5 December.
<b>6 November 2019</b>	Sandya Ekneligoda, wife of the missing journalist Prageeth Ekneligoda, lodged a complaint with the Chairperson of the Human Rights Commission of Sri Lanka (HRCSL) with regard to a statement made by SLPP Presidential candidate Gotabaya Rajapaksa on an election campaign stage in Anuradhapura, saying that he will release intelligence officers and soldiers who are in custody as soon as he comes to power
<b>27 November 2019</b>	Attorney General Dappula de Livera filed indictments against nine suspects, who are allegedly involved in the disappearance of Prageeth Ekneligoda, before the Permanent High Court Trial-at Bar.

	<p>The Colombo Special Trial-at-Bar served indictments on nine army officials over the allegations of ‘kidnapping and conspiring to murder’ journalist Prageeth Ekneligoda during a time between January 25 to 27, 2010.</p> <p>The Special Trial-at-Bar subsequently released the accused on previous bail conditions as the prosecution did not object on bail because the accused have not so far violated the previous bail conditions (during the magisterial inquiry by the HC). However, the Court imposed a travel ban on the accused and ordered the accused to surrender the passports to the court.<sup>75</sup></p>
<b>18 December 2019</b>	<p>The Permanent High Court Trial-at-Bar today decided to commence the examination of evidence in the case filed against 09 Intelligence Officers and issued summons on witnesses.</p>

<p><b>31 December 2019</b></p>	<p>Sandya Ekneligoda, wife of missing cartoonist Prageeth Ekneligoda claims that witnesses connected to the case are being intimidated by Army intelligence officers. She also denied claims that former Minister Patali Champika Ranawaka was linked to the disappearance of her husband, and requested the new President Gotabaya Rajapakasa not to influence the judicial process.<sup>76</sup></p>
<p><b>20 January 2020</b></p>	<p>The Colombo High Court ordered the Ekneligoda abduction case to be postponed until 06 February.</p>
<p><b>6 February 2020</b></p>	<p>The Special High Court Trial-at-Bar ordered to hear the case filed by the Attorney General against nine Army intelligence officers accused of abducting and disappearing journalist Prageeth Ekneligoda on the 13th of February.</p>

<b>13 February 2020</b>	The Colombo High Court Trial-at-Bar decided to fix the hearing of the Prageeth Ekneligoda abduction case to 20 February 2020.
<b>20 February 2020</b>	Evidence examination in the case filed over the abduction and assassination of Journalist Prageeth Ekneligoda to commence on the 11th of March at the Permanent High Court Trial at Bar in Colombo. <sup>77</sup>
<b>11 March 2020</b>	<p>The nine suspects who are named as defendants in the case filed regarding the disappearance of journalist Prageeth Ekneligoda claimed that they were not guilty of the charges filed against them.</p> <p>DSG Sudarshana de Silva who appeared on behalf of the Attorney General for the prosecution, urged the Court to postpone the further hearing of the case until 16 March as DSG Dileepa Peiris was unable to appear in Court today (11) due to being away on official duty. He also requested the Court to issue a warrant to Sumathipala Suresh Kumar, a former LTTE cadre who has been named as the fourth witness in the case. Kumar is currently in custody</p>

	<p>in Paris, the warrant was requested in the event that he is deported, to enable the Police to arrest him at the Bandaranaike International Airport.</p> <p>Furthermore, notice was also issued to Sandya Ekneligoda, first witness in the case and wife of the late journalist to appear in Court on 16 March to testify.</p>
<p><b>15 July 2020</b></p>	<p>The Supreme Court dismissed the Fundamental Rights petitions filed by two defendants in the case of the abduction and forced disappearance of journalist Prageeth Ekneligoda. The FR petitions had been filed by Army Intelligence Officer Lieutenant Colonel Erantha Peiris and Corporal S.K. Ulugedara, claiming that placing them under arrest over the alleged abduction and murder of Ekneligoda is unlawful.</p> <p>Deputy Solicitor General Dileepa Peiris, raising fundamental objections, told the bench that there is sufficient evidence to prove the charges against the two accused. He further stated that charges were laid against the duo based on the information discovered via analysis reports on phone records and</p>



	<p>other evidence. Taking the submissions into consideration, the bench decided to dismiss the FR petitions filed by Erantha Peiris and S.K. Ulugedara.<sup>78</sup></p>
<p><b>19 October 2020</b></p>	<p>Two Fundamental Rights petitions filed challenging former President Maithripala Sirisena's decision to grant pardon to Bodu Bala Sena (BBS) General Secretary Ven. Galagoda Atte Gnanasara Thera were re-fixed for support by the Supreme Court.<sup>79</sup></p>
<p><b>22 March 2021</b></p>	<p>Sri Lanka: The Ekneligoda case came up before the Permanent High Court Trial-at-bar on Friday 19 March 2021 after a hiatus of almost 6 months.</p> <p>Two new High Court judges D. Thotawatta and M. Weeraman have been appointed to the bench to hear the case.</p> <p>The trial is set to resume from 9 June 2021 at 1.30pm.<sup>80</sup></p>
<p><b>8 Oct 2021</b></p>	<p>Sri Lanka: After almost 7 months, the Prageeth Ekneligoda disappearance case was taken up before the Permanent High Court Trial-at-bar today. The</p>

	<p>court issued summons for 3 prosecution witnesses to appear before the court on 16 November 2021 at 1.30pm.</p>
<p><b>16 November 2021</b></p>	<p>Chairman of the Office of Missing Persons (OMP), retired Justice Upali Abeyratne was today (16) accused of contempt of court. The accusation was levelled during the High Court Trial at Bar on the case of missing journalist Prageeth Ekneligoda today. Counsel appearing for the aggrieved party, Upul Kumarapperuma accused Abeyratne and the other members of the Presidential Commission of Inquiry (PCoI) on Political Victimization for contempt of court following evidence given in court today by a witness claiming his statements to investigators and the PCoI were coerced. The witness has alleged that his previous statement to the Magistrate was made due to pressure by the Criminal Investigations Department</p> <p>Following the statement by the witness before the Trial- at- Bar, Attorney at Law Kumarapperuma has moved that the PCoI Chief and the rest of the members of the Commission should be held in contempt of court.</p>

When questioned why he had moved contempt of court charges against the PCoI on Political Victimization that was headed by Abeyratne, Kumarapperuma explained that it was on the basis that the PCoI had recorded the witness' statement in violation of a court directive.

According to the court directive, the respective witness was asked not to make any statements before any forum other than a higher court.

It is in this backdrop that the PCoI had allegedly recorded the witness' statement when he had appeared before the Commission to inform the court of the directive disregarding the order.

“The PCoI is a fact finding mission appointed by the Executive that cannot overrule the directive of a court of law,” Kumarapperuma noted, adding that the PCoI was therefore in contempt of court.

The Trial- at- Bar today directed the Attorney General's Department to respond to the allegations when further trial is held on 10th December 2021.

	<p>The Trial- at- Bar is presided by judges Gihan Kulathunge, Damith Thotawatte and Saman Weeraman<sup>81</sup></p>
<p><b>3 June 2022</b></p>	<p>Nine army intelligence officers who were indicted in connection with the abduction and murder of journalist Prageeth Ekneligoda were yesterday ordered to be remanded till June 13 by the Colombo High Court Trial-at-Bar.</p> <p>They were ordered to be remanded over an allegation that they had interfered with the prosecution witnesses in the case, which tends to prejudice a fair trial. Nine accused were granted bail at the inception of the trial, on the condition that they would not interfere with the witnesses in the case.</p> <p>The Attorney General had filed indictments, comprising 17 charges, against nine army intelligence officers attached to the Giritale Army camp in connection with the abduction and murder of journalist Prageeth Ekneligoda.</p> <p>The Attorney General had named Lieutenant Colonel Shammi Arjun Kumararatne, R.M.P.K. Rajapaksa alias Nadan, W. W. Priyantha Dilanjan</p>

	Upasena alias Suresh, S.M. Ravindra Rupasena alias Ranji, Y.M. Chaminda Kumara Abeyratne, S. M. Kanishka Gunaratne, Aiyayasami Balasubramaniam, D.G.T. Prasad Gamage and T.E.R. Pieris as the accused in the case. <sup>82</sup>
8. Rathupaswala shooting	
<b>1 August 2013</b>	Army soldiers of the 58th Division and commando regiments launched an armed attack on unarmed civilians protesting against the pollution of drinking water by release of acid from a factory in Rathupaswala, a village in Weliveriya in the Western Province of Sri Lanka. The military first removed media personnel away from the area by force before shooting at civilians. Following the shooting, 3 civilians were killed and more than 30 were injured.
<b>3 August 2013 to 6 August 2013</b>	Sri Lanka Army constituted a five-member board to investigate allegations against the military, including the assault on civilians and the killing of three protesters, including a 19-year-old and a 17-year-old boy, in Weliveriya.

	<p>Amnesty International and UNP call for an international probe into the incident.</p> <p>Human Rights Commission of Sri Lanka announced a commission of inquiry to look into the incident</p>
<b>6 August 2013</b>	The Ceylon Teachers' Union (CTU) and the Independent Educational Employees Union (IEEU) lodged a complaint with the Human Rights Commission of Sri Lanka (HRCSL) against the killing of two school children by the Army at Weliveriya last week.
<b>9 August 2013</b>	Military pressure on media reporting the incident
<b>18 August 2013</b>	Military intimidation of media reporting the incident continues

<p><b>23 August 2013</b></p>	<p>The Bar Association of Sri Lanka (BASL) has expressed strong opposition to the investigations conducted by the Army into the Weliveriya incident on 1 August, where three persons were killed. They also requested Gampaha Chief Magistrate, Tikiri Jayatilleke, to call off all investigations conducted by the Army, alleging that they are in the blame for the three deaths.</p>
<p><b>21 August 2013</b></p>	<p>The military court of inquiry into the Weliveriya shooting presented its report to the Army Commander. The report was never made public.</p>
<p><b>28 August 2013</b></p>	<p>The Magisterial inquiry was held by Gampaha Magistrate Tikiri K. Jayatillake into the deaths caused during the Weliveriya protests.</p> <p>Army Commander suspended a Brigadier and three Lieutenant Colonels implicated in the Weliveriya killings. The military proclaimed that those who broke the military law will be court-martialled.</p>

<b>18 September 2013</b>	The Bar Association of Sri Lanka (BASL) charged that officers attached to the Colombo Crime Division (CCD) are intimidating the witnesses who have given evidence on the Rathupaswala incident.
<b>May 2014</b>	<p>Brigadier Deshapriya Gunawardhana who commanded the Army battalion involved in the Rathupaswala shooting was appointed as the Military Attaché for Sri Lankan Embassy in Turkey.</p> <p>Following the incident, the government had publicised that Brigadier Deshapriya was interdicted.</p>
<b>March 2016</b>	The investigation was handed over to the CID by former IGP N.K. Ilangakoon.
<b>24 March 2017</b>	Three Army personnel arrested by the CID in connection with the shooting incident at Rathupaswala in Weliveriya. However, Army Spokesman Roshan Seneviratne said no action had been taken so far against the personnel taken into custody.



<b>April 2017</b>	The government paid Rs 4.8 million in compensation for 33 people who were shot by the army in 2013 and Rs. 1 million each to the families of the three youths who were shot dead.
<b>3 April 2017</b>	Counsel Jayantha Dehiattage, who appeared for the aggrieved party, submitted that the suspects arrested on the incident were officers of lower ranks, and prayed that the CID be ordered to arrest the higher-ranking officers who issued the command to open fire.
<b>25 May 2017</b>	Criminal Investigation Division (CID) of the Police arrested Brigadier Anura Deshapriya Gunawardena for involvement in the Rathupaswala shooting
<b>11 July 2019</b>	Attorney General requests Chief Justice to appoint trial-at-bar over Rathupaswala shooting case.
<b>11 September 2019</b>	The Attorney General (AG) filed indictments against the suspects involved in the Rathupaswala shooting incident.

<b>23 April 2021</b>	The case has been adjourned by the Gampaha High Court until June 11 <sup>83</sup>

<b>9. Wasim Thajudeen</b>	
<b>17 May 2012</b>	Rugby player Wasim Thajudeen was found dead in his burning car near Shalika Hall on Park Road, Colombo 05.
<b>April 2013</b>	The conclusion of the interim report by JMO Prof. Ananda Samarasekara indicated the cause of death was a combination of blunt force trauma to the head and Carbon Monoxide toxicity and burning.
<b>July 2013</b>	The police ruled the incident as a vehicular accident.

<b>March 2015</b>	CID took over the investigation.
<b>27 July 2015</b>	The CID noted at the Colombo Magistrate's Court that since there were disparities in the reports of the judicial medical officer and the post-mortem examination, the responsible officials were questioned. Information had come to light that foul play may have been involved in Thajudeen's death. The CID also made a request to exhume the body in order to carry out further investigations.
<b>6 August 2015</b>	<p>Following the request made by the CID, Colombo Additional Magistrate Nishantha Peiris ordered on August 6 that the body of national rugby player, Wasim Thajudeen be exhumed in the presence of the panel of the JMO, clerics and the <i>Grama Niladhari</i> Officer and also ruled that police protection be provided to the body.</p> <p>Evidence shows that the Land Rover Defender vehicle used to abduct Thajudeen shortly before he was murdered was in the possession of the Siriliya Foundation of Mrs. Shiranthi Rajapaksa.</p>

<b>10 August 2015</b>	The body of Wasim Thajudeen was exhumed and a new post mortem was conducted by a special three-member team of forensic specialists.
<b>September 2015</b>	This report found that Wasim Thajudeen’s chest plate, windpipe and two long bones which had symmetrical fractures were missing from the remains of the slain Rugby player. It concluded that the cause of death was the ‘effects of multiple injuries to the lower limbs, neck and chest of the deceased caused by blunt weapons along with the subsequent fire’. The report also stated, “Considering all the observations and comments given above, we are of the opinion that the deceased was not driving the vehicle at the time of the said accident or commencement of the fire. It is highly probable that the incapacitated person was kept on the passenger seat by another person”.
<b>3 November 2015</b>	Magistrate Nishantha Peiris, who was taking swift action to solve the Thajudeen case was transferred to the Matara District Court with effect from 1 January 2016 by the Judicial Services Commission.
<b>December 2015</b>	Three persons involved in the murder have been identified after analysing CCTV footage. Among these are two persons attached to the Navy.

<b>30 December 2015</b>	JSC canceled the transfer of Magistrate Nishantha Peiris.
<b>5 January 2016</b>	The University of Colombo School of Computing experts who analysed the CCTV footage pertaining to the murder of Wasim Thajudeen recommended that the CCTV footage should be sent for expert forensic analysis in a forensic laboratory such as the FBI Laboratory Service in the USA, the British Columbia Institute of Technology in Canada or the Metropolitan Police Service in the UK.
<b>25 February 2016</b>	Magistrate rules that Thajudeen's death was murder.
<b>3 March 2016</b>	Colombo Additional Magistrate Nishantha Peiris ordered EPDP leader and former Minister Douglas Devananda to submit the storage hard disks of the CCTV records of an office located in Park Street Colombo 5 on May 16, 2012.

<p><b>April-May 2016</b></p>	<p>Western province former senior DIG Anura Senanayake and former Narahenpita Crimes OIC Sumith Champika Perera arrested over their alleged role in the cover up of evidence.</p> <p>In a statement to the Criminal Investigations Department (CID), former Narahenpita Crimes OIC Sumith Champika Perera said that he received instructions from higher ranking police officers not to conduct further investigations in connection with the murder.</p>
<p><b>13 May 2016</b></p>	<p>The Sri Lanka Medical Council has issued charge sheets on the JMO panel led by former Colombo Chief JMO Dr Ananda Samarasekara who conducted the first autopsy on the body and a disciplinary committee will investigate the matter, the Medical Council informed the court.</p>
<p><b>20 September 2016</b></p>	<p>Chief Police Inspector at the CID Ravindra Wimalasiri informs Colombo Magistrate's Court that remains of Thajudeen were transferred to a private medical institute in Malabe (SAITM) by JMO Ananda Samarasekara.</p>

<b>2 November 2016</b>	CID conducting investigations into the murder of former rugby player Wasim Thajudeen informed Court that they have initiated a comprehensive investigation into the telephone calls received by former Narahenpita OIC Damian Perera on the night Thajudeen's murder took place. At a previous occasion, the CID informed Colombo Additional Magistrate Nishantha Peiris former Narahenpita OIC Damian Perera had received three telephone calls from the phones belonging to the Presidential Secretariat Office on the night of May 17, 2012 at Shalika Ground where Thajudeen's murder took place.
<b>2 June 2017</b>	Senior DIG Anura Senanayake enlarged on bail.
<b>28 September 2017</b>	DSG Dilan Ratnayake informs Colombo Additional Magistrate Jeyram Trotsky multiple calls were made from the presidential secretariat to the former OIC of Narahenpita police.
<b>2 October 2017</b>	Former JMO named the third suspect of the investigation.

<p><b>19 October 2017</b></p>	<p>Chief JMO of Colombo, Dr. Ananda Samarasekara surrendered to court with regard to the Wasim Thadjudeen murder case anticipating a move by CID to arrest him on charges that he had falsified the post-mortem report into Thajudeen’s death and destroyed evidence in the case. He filed for bail and was released in consideration of his ill health and treatment he is receiving.</p>
<p><b>26 January 2018</b></p>	<p>CID investigations revealed that several phone calls had taken place between the Presidential Secretariat (under the then government) and Senior DIG Anura Senanayake immediately following the incident.</p> <p>Deputy Solicitor General, Dilan Ratnayake, informed Colombo Additional Magistrate Dharshika Wimalasiri, that it is necessary to obtain several statements from a number of close associates of former president Mahinda Rajapaksa’s family, in connection to the murder of rugby player Wasim Thajudeen.</p> <p>Deputy Solicitor General, Dilan Ratnayake, speaking in court, revealed that a member of the Rajapaksa family had used two vehicles attached to the Presidential Secretariat to travel to the vicinity of the crime scene. He further notes that the two vehicles had been driven by two members of Sri Lanka</p>



	Navy, and noted that steps will be taken to obtain statements from the two Navy personnel in question.
<b>June 2018</b>	The Navy informed the CID that reports regarding the Navy officers deployed to the security convoy of former President Mahinda Rajapakse and his family were unavailable.
<b>20 September 2018</b>	CID informs Colombo Additional Magistrate Isuru Neththikumara reliable evidence that a defender vehicle given to Siriliya Saviya Foundation by Sri Lanka Red Cross Society was used to abduct Thajudeen.
<b>October 2018</b>	The Magistrate ordered the Government Analyst to probe whether any human remains and explosives had been in the jeep used for the abduction and murder of the victim.
<b>29 November 2018</b>	Colombo Additional Magistrate directs CID to arrest suspects directly involved in the crime.

**28 February  
2019**

Attorney General informs Court that indictments will be filed against three suspects, former crimes OIC of Narahenpita Police Sumith Perera, former Senior DIG Anura Senanyake and former JMO of Colombo Ananda Samarasekara.

The Deputy Solicitor General further said investigations are underway regarding several Army and Navy officers, who had served as security detail for former President Mahinda Rajapaksa, however, attempts to track their official records have failed.

Inspections into the laptop computer and the mobile phone used by Thajudeen have also failed to uncover any information useful for the ongoing investigations, the Deputy Solicitor General further told the court.

Magistrate Neththikumara made a statement in open court that there is a lack of progress in finding evidence regarding this investigation. Hence the magistrate ordered the prosecution to expedite the conclusion of investigations and to file indictments if there is any evidence against the defendants of the case.

<b>24 May 2019</b>	<p>The Attorney General filed charges in the Colombo High Court under section 198 of the penal code against former Senior DIG Anura Senanayake for providing false information to protect the accused in the Wasim Thajudeen murder case from legal action and punishment. The Colombo High Court issued notice on former Senior DIG Anura Senanayake to appear in court on the charge of screening offenders from legal punishment in the Wasim Thajudeen murder case.</p>
<b>27 June 2019</b>	<p>Colombo Additional Magistrate Shalani Perera acquitted the first accused in the Wasim Thajudeen murder case, former Officer-in-Charge of the Narahenpita Police Crimes Division, Sumith Perera.</p> <p>Attorney General served an indictment on former Senior DIG Anura Senanayake, who will become the first accused person to face trial in connection with the 2012 murder. He faces charges in the Colombo High Court under Section 198 of the Penal Code – for attempting to cover up the sportsman’s murder that was ruled a “motor traffic accident” until the case was reopened in 2015.</p>

<b>30 July 2019</b>	The case filed against former Senior Deputy Inspector General of Police Anura Senanayake for allegedly covering up evidence in connection with the death of former Havelocks SC captain Wasim Thajudeen was fixed for trial on October 23 by the Colombo High Court.
<b>7 August 2019</b>	Former Judicial Medical Officer (JMO) Ananda Samarasekara was indicted by the Attorney General at the Colombo High Court.
<b>27 August 2019</b>	Prof Ananda Samarasekara was indicted and released on bail.
<b>16 January 2020</b>	Colombo High Court Judge Vikum Kaluarachchi ordered to make submissions on 2 March on the case against former Senior DIG Western Province Anura Senanayake who is charged with concealing evidence of the murder of rugby player Wasim Thajudeen.
<b>24 February 2020</b>	The case filed against former Chief Judicial Medical Officer (JMO) Prof. Ananda Samarasekara over concealing evidence relating to the murder of

	national ruggerite Wasim Thajudeen, was re-fixed for trial on June 11 by the Colombo High Court.
<b>22 July 2020</b>	AG informs Acting Magistrate that the 3rd suspect in Thajudeen's murder Ex-Chief JMO Prof Ananda Samarasekera has died. Ex-Senior DIG Anura Senanayake the 1st suspect is ill and is receiving treatment. <sup>84</sup>
<b>26 Sept. 2020</b>	<p>The Colombo High Court yesterday adjudicated the case that was being heard before the High Court and terminated further inquiry, as the suspect of the case had passed away.</p> <p>High Court Judge Manjula Thilakaratne, on considering the submission made by the Counsel who appeared on behalf of the relations of the former JMO of Colombo, asserted that Prof. Ananda Samarasekera had passed away. Consequently, the Judge closed further proceedings of the case.</p>
<b>6 Oct 2020</b>	Former Officer-in-Charge (OIC) of the Narahenpita Police Station, Sumith Perera, claimed that he was threatened by the former Director of the Criminal Investigation Department (CID), Shani Abeysekara and other officers to produce evidence that President Gotabaya Rajapaksa and MP Namal Rajapaksa

	<p>forced him to sweep under the carpet investigations of the murder of rugby player Wasim Thajudeen. Testifying before the Presidential Commission of Inquiry yesterday (5), Perera said he was the OIC at the Narahenpita Police Station Crimes Division and conducted the investigations into the death of Thajudeen. He further claimed that after the initial investigations and the evidence produced in Court, the Magistrate ruled that the death of Thajudeen took place as a result of drinking and driving, following which the vehicle met with an accident and was on fire. However, following the appointment of the Yahapalana Government, he was summoned to the CID after the case had been ruled as a murder.</p>
<p><b>26 February 2021</b></p>	<p>Controversial policeman and key suspect in the Wasim Thajudeen murder case, former Senior Deputy Inspector General (DIG) of Police Anura Senanayake, passed away today. Senanayake had been accused of withholding evidence in the murder of rugger player Wasim Thajudeen. The former DIG had reportedly been battling an illness for a prolonged period.</p>

	<p>Senanayake was accused of having screened evidence pertaining to the Thajudeen case, knowing or having reason to believe that an offence has been committed and providing false information concealing the offender from legal punishment.<sup>85</sup></p>
<p>10. Welikada prison incident</p>	
<p><b>9 November 2012</b></p>	<p>The Army and Special Task Force (STF) were deployed to overpower a group of prisoners at the Welikada Prison. The government claimed that the prisoners were terrorist suspects. 27 prisoners were killed while 43 were injured during this attack.</p> <p>According to the accounts of eye-witnesses, the Commissioner General of Prisons was seen inside the prison immediately after the incident, and therefore, it is believed that he is aware of army officers being present inside the prison during the massacre.</p>

	<p>According to two available Certificates of Deaths, cause of death is due to shooting. However, one indicated that shooting was from afar, while eyewitnesses affirmed that all victims were shot at close range.</p>
<p><b>2012 - 2015</b></p>	<p>CID investigations inconclusive. Sudesh Nandimal, an eyewitness who had been an inmate at the time said they had not taken his full statement as the investigators had said “that is enough” at a point.</p> <p>Commission appointed by the then Minister of Rehabilitation and Prison Reforms Chandrasiri Gajadeera. The Interim or Final report has not been made public. The three-man committee has concluded that the deaths were caused by</p>



	<p>fellow inmates and justified the summoning of the Special Task Force (STF) and the Army to control the situation. The Minister was also quoted as saying the recommendations of this report couldn't be implemented as one Commissioner had disagreed with some of the recommendations made by the other two members.</p> <p>Commission appointed by then Commissioner General of Prisons, P.W.Kodippili. The report has not been made public.</p> <p>Investigation by the Human Rights Commission of Sri Lanka. The Chairman of the HRCSL was reported to have told the media that the HRCSL's investigation was put on hold based on a request by the Commissioner General of Prisons.</p>
<b>2014</b>	<p>Sriyawathi, the mother of Wijaya Rohana alias 'Gundu', one of the inmates who was killed and Samanthi, her daughter in law, were arrested on false charges.</p>

**2015**

The incident was subject to investigation by the Committee of Inquiry into the Prison Incident 2012 (CIPI) which was appointed in early 2015 by the Minister of Justice, and it presented its report in June 2015. The recommendations of the report were made public but not the contents as it would hamper ongoing or fresh investigations into the incident, the then Minister of Justice, Wijeyadasa Rajapakshe said.

The committee had recorded evidence from inmates, prison officials, military and STF personnel and several other high profile individuals, including Defence Ministry Officials, then head of Army Intelligence Kapila Henadawitarane, Senior DIG of State Intelligence and TID Chandra Wakishta and former Senior DIG/ Western Province Anura Senanayake.

In his statement to the committee, former Secretary, Rehabilitation and Prison Reforms, Ariyasiri Dissanayake confirmed the raid was conducted due to the pressure exerted by then Defence Secretary, Gotabhaya Rajapaksa. Also providing evidence, the then Commissioner General of Prisons P.W Kodippili had said the need for conducting a raid using 798 STF personnel was discussed at a meeting held on July 17, 2012, at which Rajapaksa was also present.

	<p>STF Commandant- Deputy Inspector General of Police Chandrasiri Ranawana now retired told the Committee that the search conducted on 9.11.2012 was not done on its own accord by the STF, but on the direction of Rajapaksa with the coordination of DIG Nimal Wakishta, Director- State Intelligence Service (SIS) and DIG Terrorist Investigation Division (TID) during 2012 following a series of discussions. Ranawana also confirmed that the STF functioned under the Ministry of Defence when the incident took place.</p>
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<p><b>June 2015</b></p>	<p>The report recommends fresh criminal investigations of matters that have not been taken into consideration with a special focus on alleged violations corresponding to torture and matters that constitute an offence under S. 162 of the Penal Code. It was recommended that investigations be conducted by a special team under the supervision of the IGP.</p>
<p><b>February 2016</b></p>	<p>Sriyawathi, who was suffering from cancer died in custody. Repeated efforts by her husband Alwis to obtain bail for her had failed.</p> <p>Alwis sought legal action against the injustice from The Human Rights Commission in Sri Lanka. Proceedings of the case HRC/2926/14 which lasted for two years, ended with no further action being taken. When inquired into by the HRCSL, it said their recommendations had already been sent to the relevant authorities and now it is not their job to follow the recommendations given.</p>

<b>19 March 2016</b>	Sudesh Nandimal Silva, an inmate at the time of the incident, who had testified to the Criminal Investigation Department of the Police, Human Rights Commission of Sri Lanka and the Committee of Inquiry into the Prison Incident 2012 (CIPI) reported that he was being followed by unknown persons. One such vehicle -a black coloured jeep (model Pajero with number 62-0761) was found to belong to the Police Narcotics Bureau. He lodged a complaint with the Maligawatta Police station (under CIB I 148/146).
<b>January 2017</b>	The Human Rights Commission in Sri Lanka (HRCSL) recorded a statement from journalist Kasun Pussewela after he had filed a petition at the HRCSL.  A complaint filed with the Nittambuwa police by the lawyer appearing for the aggrieved party for the threats he has been receiving.
<b>April 2017</b>	An application filed by a witness before the Court of Appeal seeking a writ of mandamus to compel the CID and Police to investigate the incident.

<p><b>17 October 2017</b></p>	<p>Senior State Counsel Madhava Tennekoon, appearing for the Attorney General, informed Court that there were inquiries conducted by teams from the Special Task Force, Army and prison officers.</p> <p>He said that a fresh investigation is being conducted by a team of police officers appointed by the IGP and 75% of the investigation has been completed and sought permission for another four to six weeks to complete the entire investigation.</p> <p>Counsel K.S. Ratnavale, appearing for the petitioner, pleaded that the investigation should be conducted in a transparent manner and its progress should be conveyed to Court.</p>
<p><b>Early 2018</b></p>	<p>Investigations into the incident initiated by CID.</p>

<b>20 March 2018</b>	<p>IP Rangajeewa filed a Fundamental Rights Petition in Supreme Court seeking an Interim Order directing the respondents including DIG Ravi Seneviratne of CID, IGP Pujith Jayasundara and the Attorney General not to arrest him until the final determination of the FR application is made.</p> <p>Former Commissioner of Prisons Department Emil Ranjan Lamahewa and former Police Narcotics Bureau Inspector Niyomal Rangajeewa were arrested and remanded on suspicion of the killing of prisoners.</p>
<b>24 April 2018</b>	<p>Magisterial inquiry into the case was taken up before the Colombo Chief Magistrate. Court ordered the investigators to uncover who gave orders to kill the inmates during the riots.</p>
<b>22 May 2018</b>	<p>Colombo Additional Magistrate Chamari Weerasooriya ordered the CID again to focus their investigations on the officials who ordered law enforcement and the armed forces to enter the prison on the day. Despite orders from the court, the CID never followed through.</p>

<b>25 September 2018</b>	The Court of Appeal ordered Rangajeewa to be released on bail.
<b>22 November 2018</b>	Rangajeewa was reinstated to his previous position at the Police Narcotics Bureau.
<b>December 2019</b>	A journalist who had been closely following the investigation lodged a complaint following numerous threats on social media reportedly from Rangajeewa. Investigations into the threats ongoing.
<b>21 June 2019</b>	The Attorney General requests the Chief Justice to appoint a three judge bench to hear the case over the Welikada Prison riot case.
<b>18 July 2019</b>	The Colombo High Court Trial-at-Bar bench served indictments on two accused, Inspector Moses Rangajeewa attached to the Police Narcotics Bureau and of Magazine Prison Superintendent Lamahewage Emil Ranjan, over the killing of inmates during the Welikada Prison Riots. They were ordered to be



	<p>released on bail by the Trial-at-Bar bench and were barred from leaving the country.</p> <p>Meanwhile, third accused Indika Sampath who was attached to the Prisons intelligence unit was not present in Court and Deputy Solicitor General Dilan Ratnayake informed the court that the prosecution is expecting to proceed with the case in absentia of the third accused.</p>
<b>30 August 2019</b>	<p>Court ordered the case to proceed without serving indictments on prison intelligence officer Indika Sampath who has been named as the accused in the case. Sampath has been absconding since January 2018 and is believed to be residing in the United Kingdom now. The case has been fixed for October 14 by the Special High Court.</p>
<b>January 2020</b>	<p>Former Commissioner of Prisons, Emil Ranjan Lamahewa lodged a complaint to the CoI investigating cases of political victimisation (2015-2019) concerning the case filed at the High Court over the 2012 Welikada Prison riot alleging that it was filed to seek political vengeance.</p>

<p><b>19 June 2020</b></p>	<p><b>Former Commissioner of Prisons, Emil Ranjan Lamahewa testified before CoI.</b></p> <p>He stated that several Non-governmental organisations had attempted to use the Welikada prison incident to prevent Gotabhaya Rajapakse becoming the President. He said that the Nambuwasam Committee appointed to investigate the incident did not function independently but tried to further the interests of these non-governmental organisations. He also said that even though the first accused in the case was released on bail, he was remanded for over a year because he refused to incriminate Gotabhaya Rajapakse in connection with the case. Lamahewa also said that the former director of the CID Shani Abeysekera conspired with the then government to fabricate evidence to file the case against him, and that he was deprived of all promotions due to him</p>
<p><b>22 June 2020</b></p>	<p><b>Police Inspector Neomal Rangajeewa of the Police Field Force Headquarters testified before CoI</b></p> <p>He said that original evidence has disappeared regarding the Welikada Prison incident. He said that when the incident occurred he was engaged in a mission to capture the drug dealer Velesuda who is now in prison. He said that due to</p>

	<p>this he and his family received death threats and also presented two CDs containing the alleged threats from Velesuda. He also said that one CD contains instructions from Velesuda to create public opinion through media that unarmed inmates were shot by police inside the prison.</p>
<b>26 June 2020</b>	<p>The Colombo Permanent High Court Trial at Bar strictly warned IP Neyomal Rangajeewa and former Prisons Commissioner Emil Ranjan Lamaheewa, the first and second suspects in the Welikada prison riot case, that their bail order would be cancelled and they would be remanded. The warning was given after the Attorney General informed the court of the fact the two defendants had made comments to the media which pose a negative impact on the case and the prosecution.</p>
<b>01 July 2020</b>	<p><b>Former Commissioner of Prisons, Emil Ranjan Lamaheewa testified before CoI</b></p> <p>Lamaheewa said that in mid 2018, Mr. Mervin Silva who came to the prison proposed to him to make a confession in court against former President Mahinda Rajapaksa and former Defence Secretary and present President Gotabaya Rajapaksa in connection with the deaths of inmates at the Welikada</p>

Prison. It was also stated that a person called Ashoka Jayathunga came to Welikada Prison with a message from the former Prime Minister's Office to meet Lamahewa and that he was asked to state the name of Mr. Gotabaya Rajapaksa with the Welikada Prison incident and he was told that he would be freed soon if it was done.

**Superintendent of the Mahara Prison Jagath Chandana Weerasinghe testified before CoI.**

Weerasinghe said that when former Minister Thalatha Athukorala made an observation tour of the prison, he discussed with her about the release of Mr. Emil Ranjan. He said that former Minister Thalatha Athukorala asked him to say the names of persons who gave orders in connection with the Welikada prison incident.

Mr. Chandana Weerasinghe said that when he informed that he was not aware of this, the Minister then said he had to get release after appearing in the court case. He said that since there was an environment against Mr. Gotabaya Rajapaksa, the request of the Minister to give the persons who ordered the incident was aimed to link Mr. Gotabaya Rajapaksa's name with the incident.

He said that Prison Superintendents led by him sent a letter to former President Maithripala Sirisena about the innocence of Mr. Emil Ranjan who was a former Chairman of Prison Superintendents Association. He said that they believed there would be a significant change in the country if Mr. Gotabaya Rajapaksa became the President. He pointed out that a major change is taking place in prisons with the intervention of the President and there will be a clear change in prison activities in future with the appointment of a Director General from the Prisons Department.

Former Senior DIG Gunasena Thenabandu, a member of the Bandula Atapattu Committee appointed to investigate into the incident said that the committee submitted a 540 page report including 17 recommendations. He said that the committee was appointed by the Ministry Secretary on the instructions of then Minister Chandrasiri Gajadeera three days following the incident. However, he said that appointing another Committee by the good governance government without considering that committee report, is questionable. He said that the aim was to act against Mr. Gotabaya Rajapaksa as a part of the process against state officials during the good governance government.

<b>07 July 2020</b>	<p>Police Inspector Neomal Rangajeewa of the Police Field Force Headquarters testified before CoI</p> <p>Rangajeewa said that former DIG Pujitha Jayasundera assured him that he would be acquitted of all charges, if he admitted that he was sent to prison by former Defence Secretary Gotabaya Rajapaksa on the day in which a clash in the prison took place. He said that attempts were made to suspend his service by framing false charges at the behest of drug traffickers and certain political party representatives.</p>
<b>20 August 2020</b>	<p>Former IGP Pujith Jayasundara, former Minister D.M. Swaminathan, CID's Superintendent of Police Chithrananda Wickramasekara and several others appeared before the CoI following summons issued after a complaint lodged by former Inspector Neomal Rangajeewa</p>
<b>24 Aug 2020</b>	<p>Former Minister Thalatha Athukorala and IGP Pujith Jayasundara appear at PCoI on Political Victimization</p>

<b>24 Sep 2020</b>	Former IGP Pujith Jayasundara testified before the PCoI on Political Victimization that following the instructions of former Minister of Prison Reforms, Rehabilitation, Resettlement and DM Swaminathan, he had ordered the recommencement of investigations into the Welikada Prison incident in 2012. He also stated when questioned that considering the time frame, the instructions have been given in line with the UNHRC session which were to be held during this period.
<b>08 Dec 2020</b>	The CoI asserts that the charges against Moses Neomal Rangajeewa and Emil Ranjan filed in the High Court in relation to the 2012 Welikada prison massacre are a result of political revenge. The CoI recommends that the Attorney General should therefore consider the findings of the Commission report and make a decision regarding the on-going case. The CoI recommends that the complainants be reinstated with all promotions due to them. It also recommends legal action to be taken against the respondents for fabricating evidence. <sup>86</sup>
<b>14 July 2021</b>	The Committee for Protecting the Rights of Prisoners (CPRP) has raised concerns over the renewed threats to the life of its Secretary W. Sudesh

Nandimal Silva who is a key eyewitness to the 2012 Welikada Prison massacre.

In a statement to the media over the weekend, CPRP Chairman Attorney-at-Law Senaka Perera claimed that Silva, a key eyewitness to the Welikada Prison massacre case HC (TAB)/493/19 being heard before the Colombo Permanent High Court Trial-at-Bar, is receiving death threats again, where on 7 July, two unidentified persons have inquired after his whereabouts from his neighbours in Maligawatta, hinting at a future threat to his life.

Furthermore, Perera claimed that a group of persons had also inquired about Silva from some of his relatives residing in Mount Lavinia where he too had lived 15 years ago.

Accordingly, a police complaint has been filed with the Dematagoda Police, following which two statements have been recorded by the Police and the CCTV recordings of the incident have also been taken into police custody.

Silva has received threats on multiple previous occasions for being an eyewitness to the 2012 Welikada Prison massacre, during which 27 inmates at the said prison complex were killed on 9 and 10 November 2012, allegedly at



	the behest of the state. <sup>87</sup>
<b>6 January 2022</b>	<p>The verdict on the 2012 Welikada Prison Riot and Massacre which was to be delivered on Thursday (6) was postponed to the 12th of January. The case was filed by the Attorney General against former Inspector of Police of the Narcotics Bureau Neomal Rangajeewa, and former Prisons Commissioner Emil Ranjan Lamahewa for the killing of eight prisoners at the Welikada Prison.</p> <p>A special three-judge bench comprising Justices Gihan Kulatunga, Pradeep Hettiarachchi and Manjula Tilakaratne will deliver the verdict</p> <p>When the case was filed by the Attorney General, Former Prison Intelligence Officer Indika Sampath was also named as an accused, and he was overseas at the time.</p> <p>He was tried in absentia and when the evidence examination of the prosecution concluded, the bench noted that there was no evidence against the accused.</p> <p>Accordingly, he was acquitted and released while the trial against Neomal Rangajeewa and Emil Ranjan Lamahewa continued.</p>

	Although 27 prisoners were killed in the prison riots on November 9, 2012, evidence was only available on the killing of eight prisoners for the Attorney General to file the case. <sup>88</sup>
<b>12 Jan 2022</b>	Former Prisons Commissioner Emil Ranjan Lamahewa has been sentenced to death in connection with the 2012 Welikada Prison Riot case by the Colombo High Court.  Meanwhile, former Inspector of Police (IP) Neomal Rangajeewa from all charges in the case. <sup>89</sup>
<b>11. Visuvamadu</b>	
<b>6 June 2010</b>	Two female returnees in Visuvamadu, Kilinochchi District in the North of Sri Lanka who had been displaced multiple times and had returned to their land from the Menik Farm IDP camp were gang raped and sexually assaulted by four military officers. Four military officers, visited their homes in the night, assaulted the women and children, gang raped one woman and sexually assaulted the other.

<b>14 June 2010</b>	<p>The police initially refused to record the complaint of the gang rape victim and asked her to lodge a complaint with the military. The victim was offered money by the military, to maintain her silence regarding the rape and when she refused, she was kept in military detention until the police arrived to record her complaint.</p> <p>The women identified the four perpetrators in an identification parade. (14th June)</p>
<b>19 November 2010</b>	<p>All four perpetrators had been released on bail, following which one perpetrator absconded and has been tried in absentia.</p>
<b>7 October 2015</b>	<p>Jaffna High Court (in case no. 1569/12) convicted 4 military personnel of gang rape and sexual harassment. The landmark judgment of the Jaffna High Court sentenced the soldiers to 20 years rigorous imprisonment, compensation of 500,000 and a fine to be paid to the gang rape victim and a further five years rigorous imprisonment, compensation of Rs.100,000 and a fine for the victim of sexual assault.</p>

<b>9 October 2019</b>	The Court of Appeal acquitted the four soldiers accused of gang rape and sentenced to 30 years rigorous imprisonment. <sup>90</sup>
<b>12. Nadarajah Raviraj</b>	
<b>10 November 2006</b>	Around 8.30 a.m, MP Raviraj had left his Manning Town flats with his security officer Police Constable Lakshman Lokuwella seated alongside in the vehicle. The vehicle was about to turn into Elvitigala Mawatha towards Narahenpita when a gunman emptied his T-56 magazine with a burst of fire at the vehicle. Several bullets that penetrated the vehicle armour and the glass window hit both occupants on their heads critically injuring them. Police Constable Lakshman Lokuwella was found dead on admission to the National Hospital Colombo but MP Raviraj succumbed to his injuries later at the Intensive Care Unit.
<b>12 November 2006</b>	Suspect arrested in Wellawaththa, whose information led to the arrest of several more from Borella, Cinnamon Gardens and Narahenpita.

<p><b>4 January 2007</b></p>	<p>A Scotland Yard team arrived in Sri Lanka whose regular reports were being sent to the Chief Magistrate's Court Colombo.</p> <p>Investigations revealed that the motorcycle was sold by two brokers named Nalaka Matagaweere and Ravindra to Arul, who at the time was living at the house of S.K.T. Jayasuriya; the latter was taken into custody together with Nalaka; Jayasuriya revealed that Arul was a former Liberation Tigers of Tamil Eelam (LTTE) member; Nalaka and Jayasuriya were later released on bail as inquiries revealed that they were not in Colombo at the time of Mr. Raviraj's assassination; arrest warrants were issued for Arul and Ravindra, who, according to the police progress report forwarded in April 2009, were strongly suspected of having gone to the areas then controlled by the LTTE.</p>
<p><b>January 2015</b></p>	<p>The newly elected government promises to reopen probes into unresolved high-profile assassinations, including that of M.P Raviraj</p>
<p><b>31 March 2015</b></p>	<p>Three Navy personnel were arrested and detained by the CID in connection with the killing of TNA Parliamentarian Nadarajah Raviraj.</p>

<b>November 2015</b>	Former soldier Nalaka Mathakadeera, J. L. Mahinda and Tennis Aruna Shantha Edirisinghe were arrested in connection with the assassination.
<b>3 November 2015</b>	Three navy personnel (Pradeep Chaminda (Chandane) alias Vajira, Lieutenant Commander Hettiarachchi and Petty Officer Seneviratne), two Karuna Group/TMVP paramilitaries (Palanasami Suresh alias Sami and Sivakanthan Vivekanandan) and a police officer (Fabian Royston Toussaint) – were charged with Raviraj's murder. A fourth navy personnel, Lieutenant Commander Munasinghe Arachchige Nilantha Sampath Munasinghe alias Navy Sampath, was charged in December 2015.
<b>8 December 2015</b>	Two suspects in the case, Nalaka Mathakadeera and Tennis Aruna Shantha Edirisinghe, were released by Colombo Additional Magistrate Nirosha Fernando
<b>7 September 2016</b>	Colombo High Court Judge Manilal Waidyathilaka yesterday decided to begin the trial in the absence of three of the suspects.

<b>27 Oct 2016</b>	Colombo High Court permits a special, Sinhala-speaking Jury to be appointed to consider the case into the killing of former MP Nadarajah Raviraj and his security officer.
<b>24 Dec 2016</b>	Court acquitted and released five suspects including three former navy intelligence personnel facing indictments over the murder of the late parliamentarian. Interestingly the verdict was delivered shortly after midnight.
<b>19 January 2017</b>	The Court of Appeal today dismissed an appeal against the recent verdict delivered by the Colombo High Court in the assassination case of TNA MP Nadaraja Raviraj. <sup>91</sup> The Court of Appeals dismissed the petition without being heard since neither the petitioner nor a lawyer representing the petitioner were present in Court when the appeal was taken up before the two-judge-bench comprising Justice Deepali Wijesundara and Justice Lalith Jayasuriya. <sup>92</sup>
<b>23 January 2017</b>	A motion has been filed before the Court of Appeal by Shashikala Raviraj, wife of slain former TNA Parliamentarian Nadarajah Raviraj, requesting the court to re-list an appeal filed by the petitioner earlier, which was dismissed by the Court of Appeal last week.

<p><b>30 January 2019</b></p>	<p>The Court of Appeal has ordered to take up the petition, challenging the verdict of Colombo High Court to acquit the defendants of the MP Nadarajah Raviraj murder case, on April 04.</p> <p>The wife of the parliamentarian Shashikala Raviraja had filed the relevant appeal.</p> <p>The petition was heard before the Court of Appeal bench consisting of Justices Deepali Wijesundara and Achala Wengappuli today (30).</p> <p>When the second respondent of the petition, former Lieutenant Commander of the Sri Lankan Navy Prasad Hettiarachchi was presented before the court, he sought for a two-month period to get an attorney to represent him, as he is currently in remanded custody.<sup>93</sup></p>
<p><b>25 November 2020</b></p>	<p>The wife of slain Tamil National Alliance (TNA) Parliamentarian Nadarajah Raviraj has appealed to President Gotabaya Rajapaksa to take courageous steps forward which will lead to reconciliation and eventually result in the prosperity of the whole nation.<sup>94</sup></p>



<b>08 Dec 2020</b>	<p>Commission of Inquiry on Political Victimisation recommends discharge of the accused in several cases including the murder of Tamil National Alliance MP Nadaraja Raviraj.<sup>95</sup></p> <p>The CoI recommends that the accused in the case of the assassination of MP Nadaraja Raviraj be acquitted of all charges. It also recommends that the indictment in the case filed in the High Court of Colombo be withdrawn by the Attorney General.<sup>96</sup></p>
<b>13. Kumarapuram Massacre</b>	
<b>11 February 1996</b>	<p>According to several survivors interviewed by Amnesty International, 24 civilians, including 13 women and seven children below the age of 12, were killed by soldiers from the 58th Mile Post and Dehiwatte army camps, accompanied by Home Guards from Dehiwatte. The killings were in apparent reprisal for the killings by the LTTE of two soldiers near the 58th Mile Post about half an hour earlier. (Another 28 were badly wounded<sup>97</sup>)</p>

**15 February  
1996**

Military Board of Inquiry headed by Major-General E.H. Samaratunge and comprising the late Brigadier Parami Kulatunge and Lt. Colonel Asoka Padeniya was appointed and it recommended the punishment of senior officers for their acts of culpable omission in standing idly by while the villagers were massacred.

Sixteen army personnel were arrested and an identification parade was held. Subsequent to the parade, eight army personnel, seven of Sinhalese ethnicity and one of Muslim ethnicity, were identified and remanded. However, they were released before the non-summary inquiry commenced. Indictment was not served on the accused even though the relevant documents in this respect were expeditiously sent by the court to the Attorney General.

Once the details of the massacre emerged, widespread public anger led to the formation of a military board of inquiry. The inquiry recommended the punishment of senior officers for their acts of culpable omission in standing idly by while the villagers were massacred. Sixteen army personnel were arrested and an identification parade was held. However, there were errors in the conducting of this parade. Many of the witnesses from whom original

	<p>statements were recorded were not called to participate. Further, some accused were not summoned to participate in the line-up.</p> <p>Subsequent to the parade, eight army personnel, seven of Sinhalese ethnicity and one of Muslim ethnicity, were identified and remanded. However, they were released before the non-summary inquiry commenced.<sup>98</sup></p>
<b>March 1996 - 16 Sept 1998</b>	<p>The non-summary inquiry in the Muthur Magistrate's Court was completed on 16th September, and the case proceedings were forwarded to the Attorney General's department for indictment. Witnesses and survivors of the massacre all gave evidence at this inquiry.<sup>99</sup></p>
<b>03 June 2002</b>	<p>Indictment was served on the accused on 120 charges including murder, attempted murder and unlawful assembly. Trial commenced in the High Court of Trincomalee and was pending for years.</p> <p>After a long judicial delay, once again the case was heard at the Trincomalee High Court on February 14, 2005 and was postponed to June 14, 2005. Unavailability of productions was the reason given for postponement.<sup>100</sup></p>

	<p>The case was taken up in the Muthur Magistrate's Court 17 times and 3 times at the High Court, Trincomalee. However, in 2006, an order was issued by the Court of Appeal to transfer the case to the Anuradhapura High Court citing security of the accused.</p>
<b>2002 - 2006</b>	<p>During this four-year period, the case was called multiple times but postponed further each time.<sup>101</sup></p> <p>The case was called on June 14, 2005 at the Trincomalee High Court and was fixed for trial, which commenced on September 8, 2005. Once more the case was postponed to the following year</p>
<b>Oct 2006</b>	<p>At the request of the accused, the Court of Appeal issued an order to transfer the case from the Trincomalee High Court to the Anuradhapura High Court, citing the security of the accused. The Attorney General did not object to the order, and counsel for victims were not given an opportunity to object.<sup>102</sup></p>
<b>Oct 2006 - June 2016</b>	<p>For ten years, no significant progress was made on the case except for a calling date on October 5, 2009.</p>

	On October 16, 2008 Order was given by Trincomalee High Court to transfer the case to the Anuradhapura court. Next date was October 5, 2009 and it was merely a calling date.
<b>27 June 2016</b>	The jury trial in the Kumarapuram massacre case (HCEP/1959/02—HC/133/08) began on June 27, 2016 after 20 years. Notices were sent to a total of 120 witnesses and 40 of them have given evidence. The inquiry was completed on July 20, 2016 and on July 21, 2016 correction on proceedings were carried out. On both days, State Counsel and Defense Counsel gave their oral submission. <sup>103</sup>
<b>July 2016</b>	A'pura High Court summoned 108 villagers to give evidence, but only 27 were located and able to make it. All 8 soldiers were indicted and released on bail within the first few hearings of the case, and were all suspended from duty following their indictment.
<b>27 July 2016</b>	The six former army Corporals who were accused were acquitted after they were found not guilty by the Anuradhapura High Court on the grounds that defendants cannot be sentenced to death based solely on the fact that they were

	identified by several witnesses in the case. A total of 101 charges had been filed against them
<b>July 29 2016</b>	The victims of the massacre appealed to the President to direct the Attorney General (AG) to appeal against the judgment and re-try the Accused before a Trial-at-Bar, and to take steps to grant a comprehensive compensation scheme to the families of the victims.
<b>26 November 2016</b>	The Court of Appeal fixed for September 6 the appeal against the Anuradhapura High Court Jury decision in the alleged massacre of villagers of Kilededi in Kumarapuram, Trincomalee. The Appeal was filed by the Attorney General against the Jury decision by which six former corporals of the Army were exonerated and acquitted in the High Court case. <sup>104</sup>
<b>2022</b>	The appeal was scheduled to be on the 23 January 2019. There has been no public action since. <sup>105</sup>

14. Bindunuwewa Massacre	
<b>24 October 2000</b>	Inmates of the Bindunuwewa Rehabilitation Centre, all young Tamils, were attacked on the morning of 25 October 2000 by a mob of an estimated 2000 comprising villagers and outside elements ferried in, while the Police stood by, abetted and participated in the outrage. 27 youths from the Centre were killed and 14 injured.
<b>27 Oct 2000</b>	Human Rights Commission visited the Centre and interviewed the police officers at the Centre

<b>8 March 2001</b>	<p>Appointment of Bindunuwewa Commission, which was mandated to inquire into questions of responsibility, rehabilitation, administration, and prevention in respect of incidents that occurred at the Bindunuwewa Rehabilitation Centre</p> <p>Criminal proceedings were initiated by the government, resulting in the indictment of 41 people, including 19 policemen. At the subsequent trial all but 5 were cleared. Two police officers, Senaka Jayampthay Karunaratne and Tyronne Roger Ratnayake, and three Sinhala civilians, Sepala Dissanayake, M.A.Sammy and R.M.Premananda, were found guilty and sentenced to death in 2003. At the sentencing, both police officers <u>maintained</u> that they were carrying out orders from the top.</p>
<b>25 March 2002</b>	Indictment of 41 suspects, including 10 members of the police
<b>July 2002</b>	The trial-at-bar began before a panel of three judges at the Colombo High Court
<b>Jan 2003</b>	Testimony ended



<b>1 July 2003</b>	Verdict announced which convicted and sentenced to death five of the accused, including two police officers
<b>27 May 2005</b>	The Supreme Court overturned all five convictions and acquitted the accused.
<b>15. Joseph Pararajasingham</b>	
<b>24 December 2005</b>	Mr. Joseph Pararajasingham, a senior Tamil politician and the Batticaloa district Member of Parliament (MP) of the Tamil National Alliance (TNA) was shot and killed by two unidentified gunmen at St. Mary's cathedral church in Batticaloa.
<b>11 October 2015</b>	The former Chief Minister of Eastern Province Sivanesathurai Chandrakanthan alias Pillayan was arrested by the CID over the killing of former parliamentarian Joseph Pararajasingham.  Two other suspects, Edwin Silva Krishna Kandaraja alias Pradeep Master, a resident of Batticaloa and Rengasami Kanayagama alias Caajan Mama were also arrested.

<b>4 Jan 2018</b>	The paramilitary leader and former chief minister of the Eastern Province, Pillayan, and several of his associates appeared at the Batticaloa High Court over the 2005 assassination of the TNA MP, Joseph Pararajasingham.
<b>13 Jan 2019</b>	<p>The Batticaloa High Court ruled last week that the confessions of the two main suspects in the murder of TNA MP Joseph Pararajasingham were made voluntarily and admissible in court.</p> <p>Judge M.Y.M. Irshadeen granted permission to the prosecution to produce the confessions of Rengasamy Kanaganayagam alias Kajan Mama and Edwin Silva Krishnanantharajah alias Pradeep Master. Lawyers for paramilitary leader and former Chief Minister of the Eastern Province Sivanesanthurai Chandrakanthan alias Pillayan, had refuted the confessions which linked Pillayan to the murder.</p> <p>Further, in 2019 challenging the indictments filed by the AG’s Department against the five suspects at the Batticaloa High Court (case number 3057/2017), two revision petitions were filed at the Court of Appeal last year.</p> <p>The revision petitions called for a voir dire inquiry — commonly known as ‘trial within a trial’ or a separate hearing in court to determine questions of fact and</p>

	<p>law after hearing evidence from witnesses. The petitions were filed on the basis of Article 138 of the Constitution and Section 364 of Code of Criminal Procedure Act (1979) arguing that the testimonies obtained from the suspects in the Judge’s confidential chambers were not voluntary but were influenced.</p> <p>A three-member bench comprising Court of Appeal President A.H.M.D. Nawaz, Justice A.A.U Wengappuli and Justice Devika Abeyratne rejected the testimonies obtained from the suspects.</p> <p>Mangaleswari Shankar, one of the lawyers who represented Pillayan, told the Sunday Times two contradictory witness statements obtained from the suspects were submitted in court and their authenticity was questioned during the revision hearings<sup>106</sup></p>
<b>22 Jan 2020</b>	<p>The case hearing for the investigation into the assassination of former Tamil National Alliance (TNA) MP Joseph Pararajasingham ruled that the case will be adjourned until February 25 2020</p>

<b>12 March 2020</b>	Former Eastern Province Chief Minister Sivanesathurai Chandrakanthan alias Pillayan was granted permission to contest in the General Election, while in remand custody.
<b>11 May 2020</b>	The case against former Eastern Province Chief Minister and the incumbent Leader of the Tamil Makkal Viduthalai Pulikal (TMVP), Sivanesathurai Chandrakanthan alias Pillayan, who is in remand in connection with the murder of late Tamil National Alliance Parliamentarian, Joseph Pararajasingham will be taken for hearing on 27 July.
<b>18 Aug 2020</b>	The Batticaloa High Court granted leave to Sivanesathurai Chandrakanthan alias Pillayan, who was elected to Parliament at the 2020 parliamentary election on August 5th, to attend the first session of the new parliament and future sessions.
<b>22 Sep 2020</b>	'Pillayan' appointed as Co-Chairman of Batticaloa District Coordinating Committee.
<b>24 Nov 2020</b>	Parliamentarian Sivanesathurai Chandrakanthan alias 'Pillayan', who was the former Chief Minister of the Eastern Province was granted bail by Batticaloa

	<p>High Court in the case filed over the 2005 killing of former parliamentarian Joseph Pararajasingham.</p> <p>Pillayan and 04 others were released on two personal bails of Rs. 100, 000/- each.<sup>107</sup></p>
<b>11 Jan 2021</b>	<p>The Attorney General's Department (AG) decided to drop the case against Pillayan in connection to the murder of former MP Joseph Pararajasingham. The AG's Coordinating Officer Nishara Jayaratne said that the AG's Department has informed the Batticaloa High Court of its decision. (On Jan 11th the A-G's decision of a "Nulle Prosequi" was conveyed to court.)</p>
<b>13 Jan 2021</b>	<p>Pillayan along with four other suspects in relation to the murder of former Parliamentarian Joseph Pararajasingham, were acquitted and released. 27 Batticaloa High Court Judge S. Susaidasan ordered the dismissal of the case.</p>
<b>16. Mirusuvil massacre</b>	
<b>20 December 2000</b>	<p>Eight internally displaced refugees returning to inspect their property were arrested on 19 December 2000 in a village named Mirusuvil close to Jaffna.</p>

	They were subsequently murdered allegedly by Sri Lankan Army soldiers and buried in a mass grave, about 16 miles east of Jaffna town.
<b>December 2000</b>	The case was taken up at the Chavakachcheri Magistrate's Court and subsequently 14 army personnel were taken into custody
<b>22 July 2002</b>	The case was taken up at the Anuradhapura Magistrate's Court
<b>29 Nov 2002</b>	The case was taken up at the Anuradhapura Magistrate's Court
<b>27 Nov 2002</b>	The Trial-at-Bar commenced at the High Court Colombo

<b>May 2005</b>	The Colombo High Court Trial-at-Bar (TAB) inquiry into the Mirusuvil massacre case has been fixed before a newly constituted three member-bench comprising Judges Mr.Upali Abeyaratne, Mr.D Wijesunthara and Mr. Sunil Rajapakse for July 25. Earlier the inquiry was scheduled to resume on 22 Monday, 2004. However, the inquiry was put off indefinitely with the murder of Judge Mr. Sarath Ambepitya who was the chairman of the three-member bench, legal sources said <sup>108</sup>
<b>June 2015</b>	Colombo High Court sentenced army sergeant Sunil Rathnayake to death. <sup>109</sup>
<b>06 March 2020</b>	A soldier sentenced to death in June 2015 for the murder of eight Tamil civilians in 2000 in Mirusuvil, is expected to be pardoned
<b>26 March 2020</b>	Presidential pardon granted for Sunil Rathnayake who was sentenced to death over the Mirusuvil massacre. <sup>110</sup>
<b>22 April 2020</b>	Centre for Policy Alternatives (CPA) and its Executive Director, Dr. Paikiasothy Saravanamuttu filed Fundamental Rights applications challenging

	<p>the decision of H.E the President to pardon Sunil Ratnayake, who was convicted for his role in the Mirusuvil Massacre which occurred in December 2000<sup>111</sup></p>
<b>24 Sep 2020</b>	<p>Justice Priyantha Jayawardena announced in open court, he was a member of the three-judge Supreme Court bench that examined the petition filed by Sunil Rathnayake against the death sentence given by the High Court bench.</p> <p>The Centre for Policy Alternatives (CPA) and its Executive Director Dr. Paikiasothy Saravanamuttu filed the Fundamental Rights application, challenging the Presidential pardon granted to Ratnayake, who was convicted for his role in the Mirusuvil Massacre.</p> <p>The petition will be called up for consideration on the 08th of February, as per an order by Justices Priyantha Jayawardena, P. Padman Surasena and Yasantha Kodagoda.<sup>112</sup></p>



<p><b>5 July 2021</b></p>	<p>Supreme Court Justice Murdu Fernando today recused herself from hearing several Fundamental Rights petitions filed challenging the Presidential pardon given to ex-soldier Sunil Ratnayake.</p> <p>When the petitions came up before Supreme Court, the three-judge-bench comprising Justice Murdu Fernando, Justice Achala Wengappuli and Justice Mahinda Samayawardena, Justice Murdu Fernando declined to hear the petitions citing she served as a member of the Supreme Court five-judge-bench which heard the appeal petition filed by Sunil Ratnayake.</p> <p>Accordingly, the Fundamental Rights petitions challenging President Gotabaya Rajapaksa's decision to grant Presidential pardon were fixed for support on September 21.<sup>115</sup></p>
<p><b>6 July 2022</b></p>	<p>Several fundamental rights petitions challenging the Presidential pardon given to ex-soldier Sunil Ratnayake were yesterday fixed for support by the Supreme</p>

	Court. The three-judge-bench comprising Chief Justice, L.T.B. Dehideniya and Justice Yasantha Kodagoda fixed the petition for support on August 4. <sup>114</sup>
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<sup>1</sup> Mylvaganam Nimalarajan, Committee to Protect Journalists  
<<https://cpj.org/data/people/mylvaganam-nimalarajan/>> last accessed 2nd March 2023

<sup>2</sup>*ibid.*

<sup>3</sup> Suspects in journalist Nimalarajan's murder case released, Sunday Times Online, 6th May 2021  
<<https://www.timesonline.lk/news-online/Suspects-in-journalist-Nimalarajans-murder-case-released/2-1133232>>

<sup>4</sup> Mylvaganam Nimalarajan, Committee to Protect Journalists  
<<https://cpj.org/data/people/mylvaganam-nimalarajan/>> last accessed 2nd March 2023

<sup>5</sup> 'Gruesome killing of five Tamil students in Trinco 13 years ago', Daily Mirror 6 July 2019

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<<https://www.dailymirror.lk/dbs-jeyaraj-column/Gruesome-killing-of-five-Tamil-students-in-Trinco-13-years-ago/192-170630>>

<sup>6</sup> Dead end in Trinco-5 case?, Verite Research  
<<https://www.veriteresearch.org/2019/07/15/trinco5-dead-end/>>

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> ‘An emblematic failure in an emblematic case’, Sri Lanka Campaign For Peace and Justice, 5 July 2019 <<https://www.srilankacampaign.org/an-emblematic-failure-in-an-emblematic-case/>>

<sup>10</sup> Tamil journalist gunned down in Trincomalee after covering paramilitary abuses, Reporters without Borders, 24 January 2006 <<https://rsf.org/en/tamil-journalist-gunned-down-trincomalee-after-covering-paramilitary-abuses>> ;Dead end in Trinco-5 case?, Verite Research <<https://www.veriteresearch.org/2019/07/15/trinco5-dead-end/>>

<sup>11</sup> Buddhist monk shot dead, BBC Sinhala, 13 May 2007  
<[https://www.bbc.com/sinhala/news/story/2007/05/printable/070513\\_monk\\_killed](https://www.bbc.com/sinhala/news/story/2007/05/printable/070513_monk_killed)>

<sup>12</sup> Report of the Special Rapporteur on Conflict Related Human Rights Violations, HRCSL  
<<https://www.hrcsl.lk/wp-content/uploads/2020/01/Suntheralingam-Report-on-Conflict-Related-Human-Rights-Violations.pdf>>

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