



ACCOUNTABILITY FOR ENFORCED DISAPPEARANCES IN **SRI LANKA**



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Accountability for Enforced Disappearances in Sri Lanka

I. Introduction

1. The Sri Lankan community has been subject to numerous waves of enforced disappearances over several decades.¹ Primarily used by Sri Lankan security forces and affiliated paramilitary groups as a tool to intimidate and oppress perceived opponents, enforced disappearances have directly targeted tens of thousands of persons. In 2016, the Sri Lankan Consultation Task Force on Reconciliation Mechanisms described it as a “damning indictment” that for three decades successive Governments had tried and failed to address the problem of disappearances.² In recent years, Sri Lanka has taken some positive steps, including ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and enacting implementing legislation.³ It has also set up successive Commissions of Inquiry (Cols) into enforced disappearances, as well as institutions designed to respond to the needs of victims such as the Office on Missing Persons (OMP) and the Office for Reparations. However, these steps have not resulted in tangible progress in realising victims’ rights. Perpetrators at all levels continue to escape justice. Impunity remains deeply entrenched. Whilst new cases of enforced disappearances appear to be relatively limited, the structural weaknesses that facilitated the earlier commission of enforced disappearances remain. Until such time as deeper reforms are instituted and accountability realised, there remains a real risk of recurrence.
2. Enforced disappearances are one aspect of the broader patterns of gross violations of international human rights law and serious violations of international humanitarian law that have occurred in Sri Lanka, including during its 26-year armed conflict (1983-2009).⁴ Under international law, enforced disappearance constitutes a “continuing” violation⁵ that does not end until the fate and whereabouts of the disappeared person have been determined with certainty.⁶ As highlighted in this report, the living legacy of enforced disappearances haunts entire families and communities, and has had particularly devastating gendered impacts. Without further resolution, Sri Lankan social cohesion will continue to be harmed, with eroded trust in the rule of law and State institutions undermining the prospects of real reconciliation and unity.
3. Building on the foundations of previous examinations into patterns of enforced disappearances by United Nations (UN) bodies, including the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, the OHCHR Investigation on Sri Lanka mandated by the UN Human Rights Council and country visits to Sri Lanka by the Working Group on Enforced or Involuntary Disappearances (WGEID), this report focuses on the specific issue of accountability. A holistic approach to accountability is adopted to take into account victims’ rights to truth, justice, reparations and guarantees of non-recurrence. This report is issued pursuant to both the United Nations High Commissioner for Human Rights’ general mandate under General Assembly resolution 48/141 and OHCHR’s more specific mandate under Human Rights Council resolutions 46/1 and 51/1 which requested the Office to strengthen its capacity to advance accountability for the gross violations of human rights and serious violations of international humanitarian law and related crimes committed in Sri Lanka. The

¹ Please see Chapter III of this report.

² Consultation Task Force on Reconciliation Mechanisms, “Interim Report: The Office on Missing Persons Bill and Issues Concerning the Missing, the Disappeared and the Surrendered”, (August 2016), p. 58.

³ Sri Lanka ratified the International Convention for the Protection of All Persons from Enforced Disappearance Act (ICPPED) in 2016, and subsequently enacted the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018.

⁴ See United Nations, Human Rights Council, Report of the OHCHR Investigation on Sri Lanka (OISL Report), A/HRC/30/CRP.2, 16 September 2015.

⁵ See Committee on Enforced Disappearances, General Comment No. 1 (2023) on Enforced Disappearance in the Context of Migration, CED/C/GC/1, 26 October 2023, para. 40.

⁶ Ibid., para. 39.

information and recommendations presented in this report form an integral part of OHCHR's development of possible strategies for future accountability processes and its advocacy for victims and survivors.

4. In this report, particular attention has been given to amplifying the voice of victims and presenting their perspectives on accountability. In this report, "victim" is used in the sense outlined in the ICPPED, which includes the disappeared person and any individual who has suffered harm as a direct result of an enforced disappearance.⁷ In addition, this report analyses and assesses steps taken towards accountability at the domestic and international levels. Specific recommendations are made for further action. Sri Lankan authorities are urged to intensify their search for the truth about the fate and whereabouts of disappeared persons, to investigate and prosecute perpetrators, and to provide adequate and gender-responsive reparations to victims through schemes based on effective and meaningful consultation with victim groups and civil society organizations (CSOs). Necessary reforms to prevent future disappearances include the repeal of draconian laws that enable arbitrary detention, and institutional reform of the justice, military and law enforcement sectors. At the international level, States and international organizations should leverage their influence to advocate for genuine accountability, and take complementary measures, including prosecutions, as well as targeted sanctions and other restrictive measures consistent with international law.

Methodology

5. In preparing this report, OHCHR carried out a series of consultations with victims exploring the impacts of enforced disappearances in Sri Lanka, and their perspectives on accountability. OHCHR held bilateral interviews with 39 victims (32 women and 7 men) and convened focus groups involving 43 victims (34 women and 9 men). The consultations were carried out using semi-structured interviews. The higher ratio of women participants in these consultations reflects the fact that a majority of those disappeared were men, and it is female relatives, particularly wives and mothers, who are leading the search for their loved ones and pressing for accountability. Deliberate effort has been made to include victims from different periods, different geographical areas, and varying ethnic and political backgrounds. Those who took part in the consultations included victims of enforced disappearance in Sri Lanka's south in the late 1980s (Janatha Vimukthi Peramuna (JVP) insurgency period), in Sri Lanka's North and East in the mid-1990s, and around the end of the conflict in 2009. While efforts have been made to ensure a spectrum of opinions, OHCHR acknowledges the diversity of perspectives amongst victims and recognizes that the report cannot fully represent the opinions of all victims. OHCHR also consulted with victims' legal representatives, other human rights defenders in Sri Lanka and abroad, and international civil society organizations. All interviews and consultations were carried out in accordance with a victim-centred and gender-sensitive approach using OHCHR standard methodology, including abiding by the "do no harm" principle, respecting confidentiality, ensuring protection of sources and obtaining informed consent to use information.
6. OHCHR has reviewed the findings of previous United Nations investigations and information available from other UN human rights processes. A request was made to the Sri Lankan authorities for further information in January 2024. However, the Government of Sri Lanka informed OHCHR that it was not in a position to accede to the request given its opposition to HRC resolutions 46/1 and 51/1.⁸ Notwithstanding this, OHCHR has carefully reviewed publicly available Sri Lankan documentation, including official reports and submissions to UN human rights mechanisms, including its recent first report to the Committee on Enforced Disappearances (CED), and its statements and communications with the Working Group on

⁷ ICPPED, art. 24(1); United Nations, General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, principle 8.

⁸ Letter from the Permanent Mission of Sri Lanka to OHCHR, dated 12 February 2024.

Enforced or Involuntary Disappearances (WGEID), and the Human Rights Council. OHCHR has engaged in additional open-source research.

7. OHCHR is grateful to all those who have cooperated in the preparation of this report, offering its particular thanks to those victims and their representatives who were willing to engage, notwithstanding the intimidation and harassment many have faced in their struggle for justice.

II. International Law Framework

8. Under international law, Sri Lanka is prohibited under any circumstances from engaging in enforced disappearances. It must take effective measures to prevent enforced disappearance, and take action to ensure accountability and realise victims' rights to truth, justice, reparations and guarantees of non-recurrence.

International Human Rights Law (IHRL)

9. International human rights law applies both in times of peace and armed conflict.⁹ The ICPPED, ratified by Sri Lanka in May 2016, defines an enforced disappearance as the:

*"arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."*¹⁰

The ICPPED also addresses cases involving non-State actors by establishing an obligation on States to investigate and bring to justice persons engaged in disappearances that acted without the authorization, support or acquiescence of the State.¹¹

10. Enforced disappearance constitutes a continuing offence that does not end until the fate and whereabouts of the disappeared person are clarified.¹² For this reason, Sri Lanka has binding obligations under the ICPPED with respect to both enforced disappearances that commenced after the entry into force of the Convention for Sri Lanka, as well as continuing offences that commenced before that date. In addition, Sri Lanka ratified the International Covenant on Civil and Political Rights in 1980. According to the Human Rights Committee, while the term "enforced disappearance" does not appear expressly in any article of the Covenant, an enforced disappearance constitutes a single, integrated group of acts that represent a continuing violation of various rights recognized in that treaty, including the right to life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and the right to liberty and security of the person.¹³ Customary international law also prohibits Sri Lanka from engaging in enforced disappearances.¹⁴ As reaffirmed by the 1992 United Nations Declaration on Enforced Disappearance, enforced disappearances represent gross human rights violations that offend human dignity and contravene, inter alia, the disappeared person's right to recognition before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.¹⁵ They also violate or constitute a grave threat to the

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 177-178, paras. 105-106. As to IHL as the *lex specialis* during armed conflict, see also: *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 240, para. 25.

¹⁰ ICPPED, art. 2.

¹¹ ICPPED, art. 3. Note also that under the Rome Statute of the International Criminal Court (ICC Statute), art. 7(2)(i) acts linked to a political organization can also amount to enforced disappearances as underlying acts of crimes against humanity.

¹² *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 17(1); ICPPED, art. 8(1); CED/C/GC/1, para. 40.

¹³ See *Drif v. Algeria*, CCPR/C/135/D/3321/2019, para. 8.4; *Katwal v. Nepal*, CCPR/C/113/D/2000/2010, para. 11.3.

¹⁴ *The Declaration on the Protection of All Persons from Enforced Disappearance* has been described as reflecting, codifying and consolidating customary international law: See United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances on its Mission to Peru*, A/HRC/33/51/Add.3, 8 July 2016, para. 3.

¹⁵ *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 1(2).

right to life¹⁶, and impact the enjoyment of a wide range of rights, including economic, social and cultural rights, such as the right to an adequate standard of living and the right to health.¹⁷

11. The anguish and stress suffered by family members has been recognised as a form of torture or cruel, inhuman or degrading treatment by the Human Rights Committee.¹⁸ Families may also experience violations of their economic, social and cultural rights as a result of the disappearances.¹⁹ The loss of a parent through enforced disappearance infringes concerned children's human rights. Disappearances often have specific gendered and intergenerational impacts, affecting the rights of women and children.

International Humanitarian Law (IHL)

12. Disappearances that occurred in the context of Sri Lanka's non-international armed conflict²⁰ also violate international humanitarian law. Under customary international humanitarian law, enforced disappearance is prohibited.²¹ Whilst "enforced disappearances" are not explicitly addressed in IHL treaties, such acts violate, or threaten to violate, a range of customary IHL norms, including the prohibition of arbitrary deprivation of liberty, the prohibition of torture and other cruel or inhuman treatment, and the prohibition of murder.²² Additionally, parties to a non-international armed conflict are required to take steps to prevent disappearances, including through the registration of persons deprived of their liberty.²³ Parties are required to take all feasible measures to account for persons reported missing as a result of armed conflict and to provide their family members with information it has on their fate.²⁴

International Criminal Law (ICL)

13. Enforced disappearance, if committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, is a crime against humanity.²⁵ Crimes against humanity can be committed during peace or conflict times. Enforced disappearances were recognized as a form of "inhumane act" giving rise to crimes against humanity as far back as the 1940s.²⁶ Disappearances committed in the context of an armed conflict are regarded as "composite war crimes" and will regularly entail a combination of war crimes, including murder and deprivation of a fair trial.²⁷

Accountability-related Obligations under International Law

14. Sri Lanka is required under international law to take specific action to address enforced disappearances when they occur, including to investigate and prosecute perpetrators, search

¹⁶ International Covenant on Civil and Political Rights (ICCPR), art. 6; *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 1; Human Rights Committee, *General Comment No. 36, Article 6: Right to Life*, CCPR/C/GC/36, 3 September 2019, paras. 57-58.

¹⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR), arts. 11 and 12; United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/30/38/Add.5, 9 July 2015, paras. 68, 72.

¹⁸ See *Sarma v. Sri Lanka*, CCPR/C/78/D/950/2000, para. 9.5.

¹⁹ United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/30/38/Add.5, 9 July 2015, para. 23. See also ICPPED, art. 24(1) and (6).

²⁰ See A/HRC/30/CRP.2, para. 182.

²¹ Jean-Marie Henckaerts and Louise DoswaldBeck, *Customary International Humanitarian Law - Volume I: Rules*, (Cambridge, Cambridge University Press, 2005), rule 98, pp. 340-343.

²² Henckaerts and DoswaldBeck, *Customary International Humanitarian Law*, rules 89, 90, 99. Enforced disappearances may also violate the right under international humanitarian law not to be convicted or sentenced except pursuant to a fair trial affording all essential judicial guarantees.

²³ *Ibid.*, rule 123.

²⁴ *Ibid.*, rule 117.

²⁵ See ICC Statute, art. 7(1)(i), which, while not binding on Sri Lanka as a matter of treaty law, is widely accepted as reflective of customary international law.

²⁶ See International Military Tribunal, *Trial of the Major War Criminals before the International Military Tribunal*, Proceedings and Judgment, 19-29 July 1946, vol. 19, p. 480 and vol. 22, pp. 475 and 498.

²⁷ Henckaerts and DoswaldBeck, *Customary International Humanitarian Law*, rule 156.

for the truth about the fate and whereabouts of disappeared persons and provide reparations.

Duty to Investigate

- 15.** Sri Lanka must initiate criminal investigations when there is reason to believe that an enforced disappearance may have taken place on its territory, whether or not the disappeared persons' family launched a formal complaint.²⁸ Sri Lanka has an obligation to search for disappeared persons, regardless of the circumstances of the disappearance, the date on which the disappearance began and when the search was launched.²⁹ These investigations must be prompt, effective and thorough, impartial and independent, transparent and participatory.³⁰

Duty to Prosecute

- 16.** Sri Lanka has an obligation under IHRL to prosecute, adjudicate and punish anyone identified by criminal investigations as having committed, ordered or otherwise been directly involved in enforced disappearances.³¹ Furthermore, it must take the necessary measures to hold criminally responsible superiors who knew or consciously disregarded information that subordinates committed enforced disappearances, had effective control over their relevant activities and failed to take all necessary and reasonable measures within their power to prevent or repress enforced disappearances or to submit the matter to the competent authorities for investigation and prosecution.³² IHL similarly requires Sri Lanka to prosecute those responsible for war crimes involving enforced disappearances, including on grounds of command or superior responsibility.³³ Legal obstacles must not impair bringing perpetrators to justice, including the invocation of superior orders,³⁴ restrictive statutes of limitations³⁵, amnesties or other measures that exempt persons from criminal proceedings, or privileges and immunities.³⁶ Penalties must be appropriate in light of the seriousness of the crime. Pardons are only permissible in very exceptional circumstances.³⁷

Right to the truth

- 17.** The right to know the truth about gross violations of human rights and serious violations of international humanitarian law stems from the State's duty to protect human rights, investigate and prosecute those responsible for gross violations of international human rights law and serious violations of international humanitarian law and provide for victims' rights to effective

²⁸ ICPPED, art. 12; *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 13.

²⁹ ICPPED, art. 24(3); United Nations Committee on Enforced Disappearances, *Guiding Principles for the Search for Disappeared Persons*, CED/C/7, 8 May 2019, principle 1.

³⁰ ICPPED, arts. 12 and 24(6); Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, paras. 28 and 58; United Nations High Commissioner for Human Rights, *Minnesota Protocol on the Investigation of Potentially Unlawful Death: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, (2017), paras. 23-29, 31, 35-37; United Nations, Economic and Social Council, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005, principle 19.

³¹ ICPPED, art. 11(1); Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, para. 58; *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, principle 19.

³² ICPPED, art. 6.

³³ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rules 153 and 158.

³⁴ ICPPED, art. 6(2); *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 6(1).

³⁵ ICPPED, art. 8; *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 17(3). Statutes of limitations should not be applied in cases of enforced disappearances amounting to war crimes or crimes against humanity: See Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 160.

³⁶ ICPPED, art. 24(4) and (6); A/RES/47/133, art. 16(3) and 18(1); A/HRC/51/31/Add.3, para. 74; Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, para. 27.

³⁷ Any pardon process has to take into account the extreme seriousness of enforced disappearances (*Declaration on the Protection of All Persons from Enforced Disappearance*, art. 18(2)), and should only be granted after a genuine peace process or bona fide negotiations with the victims are carried out, resulting in apologies and expressions of regret from the State or the perpetrators, and guarantees to prevent disappearances in the future: United Nations, Working Group on Enforced or Involuntary Disappearance, *Disappearances, Amnesty and Impunity: General Comment on Article 18 of the Declaration on the Protection of all Persons from Enforced Disappearance*, 2005, para 8(b) available in E/CN.4/2006/56, 27 December 2005, p. 17. See also: United Nations, Human Rights Council, *Accountability: Prosecuting and Punishing Gross Violations of Human Rights and Serious Violations of International Humanitarian Law in the Context of Transitional Justice Processes - Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli*, A/HRC/48/60, para. 97 (b) and (f);

remedy.³⁸ Victims of enforced disappearances have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate and whereabouts of the disappeared person.³⁹ In the case of the death of an individual, this includes the right of return of remains to the next of kin, and the identification of the place of burial.⁴⁰ The WGEID has acknowledged that there may be cases where despite comprehensive investigations, full clarification may not be possible (e.g., where the victim's body cannot be found). However, even in these cases, the State has the obligation to investigate until it can appropriately determine by presumption the fate or whereabouts of the person.⁴¹ Furthermore, as the CED has stated "victims, their legal representatives, counsel or any person authorized by them, and any person, association or organization with a legitimate interest have the right to take part in the search".⁴² The right to truth also has a collective dimension, which, as the WGEID has stated, demands that truth be told at the "level of society", not least as a "vital safeguard against the recurrence of violations".⁴³ Sri Lanka must also ensure the preservation of, and public access to any military, police or other government archives that contain information on enforced disappearances.⁴⁴

Right to reparation and guarantees of non-recurrence

18. All victims of enforced disappearances have the right to effective remedies, including full reparations.⁴⁵ These should be gender-responsive, recognizing that enforced disappearances may have affected men, women and boys and girls differently. This includes taking appropriate measures to ensure victims' participation-both -men and women- in the design and implementation of comprehensive, people-centred, appropriate and effective reparations. Reparations should also take into account the rights of child victims. Reparations include prompt, fair and adequate compensation and non-monetary reparation, including restitution, rehabilitation, satisfaction, including restoration of dignity and reputation and guarantees of non-recurrence.⁴⁶ Under no circumstances should families be obliged to declare the disappeared person dead to be eligible for reparation.⁴⁷ Interim reparation measures may be necessary to swiftly provide essential services and support to victims, particularly those facing precarious circumstances. However, interim reparations should not be adopted in lieu of a comprehensive reparations programme, but instead should be in support of such a programme and while it is being developed. Victim participation must also be included.⁴⁸ Satisfaction includes governmental verification of the facts and public disclosure of the truth, public apologies,⁴⁹ an accurate accounting of the legal violations,

³⁸ Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, principle 2; United Nations, Economic and Social Council, *Study on the Right to the Truth*, E/CN.4/2006/91, 8 February 2006; United Nations, Human Rights Council, *International Legal Standards Underpinning the Pillars of Transitional Justice - Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, Fabián Salvioli, A/HRC/54/24, 10 July 2023, para. 18.

³⁹ ICPPED, art. 24(2); Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 117; Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*, 2010, available in A/HRC/16/48, pp. 12-17; A/HRC/54/24, para. 19.

⁴⁰ See *Staselovich v. Belarus*, CCPR/C/77/D/887/1999, para. 11.

⁴¹ Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearances as a Continuous Crime*, 2010, para. 5, available in A/HRC/16/48, p. 12.

⁴² Committee on Enforced Disappearances, *Guiding Principles for the Search for Disappeared Persons*, CED/C/7, 8 May 2019, principle 5(1).

⁴³ Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearances as a Continuous Crime*, para. 5, available in A/HRC/16/48, p. 12.

⁴⁴ *Ibid.*

⁴⁵ ICPPED, art. 8(2); ICCPR, art. 2(3); Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, principles 31-34.

⁴⁶ Declaration on the Protection of All Persons from Enforced Disappearance, art. 19; Basic Principles and Guidelines on the Right to a Remedy and Reparation, A/RES/60/147, principle IX; Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, paras. 28 and 58.

⁴⁷ Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, para. 58.

⁴⁸ United Nations, "Guidance Note of the Secretary-General: Transitional Justice - A Strategic Tool for People, Prevention and Peace", 11 October 2023, pp. 18-19.

⁴⁹ United Nations, General Assembly, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, A/74/147, 17 July 2019

sanctions against those responsible for the violations, and the search for the disappeared.⁵⁰ To ensure non-recurrence, amendment of domestic legislation and other systemic reforms may be required.

Protection against intimidation and harassment

19. Sri Lanka must protect anyone involved in the quest for accountability, in particular families of the disappeared, lawyers, witnesses, and justice officials, from intimidation or reprisals.⁵¹ It must guarantee the right of victim families and others to form and participate freely in associations that seek to establish the circumstances of enforced disappearances and the fate of disappeared persons, or to assist victims of enforced disappearance.⁵²

III. History of Enforced Disappearances in Sri Lanka

20. Enforced disappearances have not been isolated events in Sri Lanka. The country has experienced many waves of disappearances, with particularly extensive use of the practice by government security forces and affiliated paramilitary groups⁵³ in the context both of the armed conflict and counter-insurgency operations, as well as a more general tool of repression against those perceived as opposed to the Government.⁵⁴ One of Sri Lanka's Presidential Commissions of Inquiry for instance stated that, from the evidence it received, 90 per cent of disappearance cases were ascribed to State security forces (army, navy, air force and the police).⁵⁵ The Liberation Tigers of Tamil Eelam (LTTE) also engaged in abductions which the WGEID has described as "tantamount to enforced disappearances".⁵⁶ LTTE abductions were often precursors to unlawful killings and forced recruitments. There is, however, little in published investigation reports concerning disappearances by the LTTE.
21. There is no authoritative figure on the number of enforced disappearances that occurred in Sri Lanka.⁵⁷ Considering available official figures and expert estimates, it is apparent that tens of thousands disappeared from the 1970s to 2009. The WGEID alone registered over 12,000 disappearance cases from 1980 to 1997 (12 061 men and 147 women).⁵⁸ In a 2002 report to the Human Rights Committee, the Government of Sri Lanka, stated that the number of disappearances between 1988-1990 was approximately 27,200.⁵⁹ As of 2023, the OMP had nearly 15,000 complaint files of persons classified as "missing".⁶⁰ All these figures are likely to represent a significant under-estimation of the disappearances that have in fact occurred.
22. Amongst the key contributing factors to disappearances in Sri Lanka were the broad and largely unchecked powers given to security forces to arrest and detain individuals for vaguely-defined national security reasons. The declaration of a state of emergency in March 1971 under the Public Security Ordinance was followed by the introduction of emergency powers and additional legislation. In particular, the Prevention of Terrorism Act enabled widespread arbitrary detention, torture and enforced disappearances by, *inter alia*, allowing for

⁵⁰ *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, A/RES/60/147, principle IX, para. 22.

⁵¹ ICPPED, arts. 12(1), 12(4) and 18(2); *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 13(3); Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, para. 28.

⁵² ICPPED, art. 24(7).

⁵³ United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances on its Mission to Sri Lanka*, A/HRC/33/51/Add.2, 8 July 2016, paras. 6-9.

⁵⁴ *Ibid.*

⁵⁵ Kishali Pinto-Jayawardena, "Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry", (International Commission of Jurists, January 2010), p. 81, citing "Final Report of the 1994 Northern and Eastern Disappearances Commission", Sessional Paper No. VII, 1997, p. 62. Presidential Commissions of Inquiry are discussed further in this report at pp. 65-124.

⁵⁶ A/HRC/33/51/Add.2, para. 9.

⁵⁷ The Office on Missing Persons (Sri Lanka), "Interim Report", (August 2018), para. 11.

⁵⁸ A/HRC/33/51/Add.2, para. 7.

⁵⁹ Sri Lanka, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Fourth Periodic Report – Sri Lanka", CCPR/C/LKA/2002/4, 18 October 2002, para. 161.

⁶⁰ Committee on Enforced Disappearances, *Report Submitted by Sri Lanka under Article 29 (1) of the Convention, Due in 2018*, CED/C/LKA/1, 12 September 2023, para. 52. Note that the category of "missing" is broader than "disappeared", and includes for instance, military personnel who were missing in action.

prolonged detention of persons without having to be brought before a magistrate.⁶¹ Other identified contributing factors included structural weaknesses in the judicial system and entrenched impunity.⁶²

23. The first wave of large-scale disappearances occurred in the context of the suppression of the left-wing Sinhalese Janatha Vimukthi Peramuna (JVP) insurgency in 1971. Thousands of suspected JVP and other opposition supporters were reportedly subjected to enforced disappearances or killed following their arrest in 1971,⁶³ with the extensive powers given to security forces, and the suspension of *habeas corpus* and other due process rights, facilitating the upsurge in disappearances.⁶⁴ The majority of those disappeared during this JVP uprising were Sinhalese male youth.
24. A second wave of enforced disappearances emerged with the outbreak of armed conflict between the Sri Lankan State and the LTTE in 1983.⁶⁵ Security forces applied broad and unchecked powers of arrest and detention, particularly under the Prevention of Terrorism Act, resulting in many suspected supporters of Tamil armed groups becoming victims of enforced disappearances, particularly in the North and East. The WGEID transmitted 861 cases, the vast majority involving male victims,⁶⁶ to the Government of Sri Lanka during 1983-1987.⁶⁷ Similarly, between 1987 and 1990, in the context of the second JVP insurgency in the south, thousands of Sinhalese JVP members were reportedly disappeared.⁶⁸ A Presidential Commission of Inquiry noted that “subversive groups” also abducted and “disappeared” opponents but in fewer numbers.⁶⁹
25. Enforced disappearances continued through the 1990s, mirroring the progression of the conflict. Thousands of Tamils, primarily young Tamil men accused or suspected of belonging to, collaborating with, aiding or sympathizing with LTTE, disappeared in the East after being detained during army cordon-and-search operations, often in conjunction with the police, particularly its elite Special Task Force.⁷⁰ Between late 1995 and early 1996, the security forces succeeded in regaining control of the northern Jaffna peninsula. Further enforced disappearances in the North followed,⁷¹ with many victims disappearing after being detained during round-up operations or at military checkpoints.⁷² The WGEID received reports of 622 cases in 1996 and a further 92 cases in 1997.⁷³
26. From 2002, during the brief ceasefire period, fewer disappearances were reported.⁷⁴ However, with the LTTE’s Eastern Commander Colonel Karuna breaking away from the LTTE to form the government-affiliated Karuna Group in March 2004, enforced disappearances by the Sri Lankan security forces⁷⁵ and different non-State armed groups increased.⁷⁶ A spate

⁶¹ Sri Lanka, Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979; Sri Lanka, Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 10 of 1982.

⁶² United Nations, *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, paras. 35-38.

⁶³ Jane Thomson-Senanayake, *A Sociological Exploration of Disappearances in Sri Lanka*, (Asian Human Rights Commission, Hong Kong, 2014), pp. 35-36; Lord Avebury, “Report on Visit to Ceylon”, (September 1971), pp. 2, 7, 9 and Appendix I.

⁶⁴ Thomson-Senanayake, *A Sociological Exploration of Disappearances in Sri Lanka*, p. 35.

⁶⁵ A/HRC/30/CRP.2 (2015), paras. 3 and 47.

⁶⁶ See figures included in United Nations, Economic and Social Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1986/18, 24 January 1986, paras. 202-213; United Nations, Economic and Social Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/1988/19, 31 December 1987, paras. 200-212.

⁶⁷ E/CN.4/1992/18/Add.1, para. 20.

⁶⁸ *Ibid.*, para. 30; United Nations, Economic and Social Council, *Report on the Visit to Sri Lanka by a Member of the Working Group on Enforced or Involuntary Disappearances (25-29 October 1999)*, E/CN.4/Add.1/2000/64, 21 December 1999, para. 1. Some INGO estimates have put the figure of killings and disappearances during the JVP uprising in 1989-1990 at 30,000-60,000: Amnesty International, “Sri Lanka: Refusing to Disappear”, 2017, p. 11.

⁶⁹ Thomson-Senanayake, *A Sociological Exploration of Disappearances in Sri Lanka*, p. 117.

⁷⁰ E/CN.4/2000/64/Add.1, para. 2.

⁷¹ Amnesty International, “Sri Lanka: Government’s Response to Widespread ‘Disappearances’ in Jaffna”, ASA 37/024/1997, 27 November 1997, pp. 7-12.

⁷² *Ibid.*, pp. 7-8.

⁷³ E/CN.4 /Add.1/2000/64, paras. 2 and 9.

⁷⁴ United Nations, Economic and Social Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, E/CN.4/2005/65, 23 December 2004, p. 81.

⁷⁵ A/HRC/30/CRP.2, paras. 425 and 428

⁷⁶ *Ibid.*, para. 411.

of abductions in Colombo, primarily of Tamil and Muslim businessmen, occurred in 2006 and 2007.⁷⁷

27. According to WGEID reports from 2007 to 2009, the Sri Lankan Army, the police and government-affiliated paramilitary groups were allegedly responsible for most enforced disappearances during this period.⁷⁸ In several locations, individuals were abducted in generally unmarked white vehicles and then disappeared, in a phenomena which came to be known as “white van” cases.⁷⁹ The main targets appeared to have been young men suspected to be affiliated with the LTTE, but included government critics, human rights defenders, humanitarian workers and journalists.⁸⁰ OHCHR reported that “white van” abductions continued to occur even after 2009.⁸¹
28. In the final phase of the conflict in 2009, the scope of those who were subject to enforced disappearances broadened, to include Tamil men and women of all ages, and boys and girls.⁸² Hundreds were reportedly disappeared in mid-May 2009, including surrendering LTTE fighters, as well as LTTE cadres without combat functions, their relatives and others who “surrendered” to the security forces. An emblematic case is the disappearance on 18 May 2009 of the Father Francis Joseph-led group, who were last seen in the custody of the security forces.⁸³ The Sri Lankan Lessons Learned and Reconciliation Commission expressed concern about the number of cases brought to their attention “concerning alleged disappearances of LTTE cadres who had surrendered to or been arrested by the Sri Lankan Army particularly in the final days”, noting the imperative for the Government to launch a full investigation.⁸⁴ The Panel of Experts on Accountability in Sri Lanka concluded that credible allegations pointed to the Government’s commission of crimes against humanity, including on the basis of disappearances committed at the end of the conflict.⁸⁵
29. Allegations of enforced disappearances have persisted after 2009, though not on the same scale.⁸⁶ The Government stated in its report to the CED submitted in 2023 that there had been no enforced disappearances reported between 2017-2023.⁸⁷ However, cases characterized as concerning “missing persons” are listed in the cases handled by the Human Rights Commission of Sri Lanka (HRC-SL) in their 2022 Statistics of Complaints.⁸⁸ Furthermore, the risk of repetition remains given a lack of structural change to key contributory factors. The security forces retain broad arrest and detention powers under the Prevention of Terrorism Act. While amendments to the Prevention of Terrorism Act introduced in 2022 improved some safeguards,⁸⁹ the most problematic aspects of the Act were not altered.⁹⁰ No systematic vetting has been undertaken to remove those credibly implicated in

⁷⁷ International Crisis Group, “Sri Lanka’s Human Rights Crisis: Asia Report N°135 – 14 June 2007”, 14 June 2007, pp. 11-12.

⁷⁸ United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/7/2, 10 January 2008, paras. 330-331; United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/10/9, 25 February 2009, paras. 351-352; United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/13/31, 21 December 2009, paras. 504-505.

⁷⁹ A/HRC/30/CRP.2, paras. 63, 345-349.

⁸⁰ *Ibid.*, para. 408.

⁸¹ See, for example, United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/34/20, 10 February 2017, para. 57.

⁸² A/HRC/30/CRP.2, paras. 429-443.

⁸³ *Ibid.*, paras. 433-443. 14 habeas corpus petitions were lodged in the Vavuniya and Mannar High Courts.

⁸⁴ Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC), “Report of the Commission of Inquiry on Lessons Learnt and Reconciliation”, November 2011, paras. 4.318-4.319.

⁸⁵ United Nations Secretary General, *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, para. 251.

⁸⁶ For example, for the period 2010-2023, the WGEID had 25 cases of enforced disappearances transmitted to it from Sri Lanka. This compares with 390 for the year 2009 alone. See United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/54/22, 8 August 2023, p. 40.

⁸⁷ CED/C/LKA/1, para. 36.

⁸⁸ Human Rights Commission of Sri Lanka, “Details of Complaints Received by Head Office & Regional Office -2022”. Available at www.hrcsl.lk/reports/statistics-of-complaints/ (accessed on 4 March 2024).

⁸⁹ United Nations, Human Rights Council, *Situation of Human Rights in Sri Lanka: Comprehensive Report of the United Nations High Commissioner for Human Rights*, A/HRC/51/5, 4 October 2022, para. 18.

⁹⁰ A/HRC/51/5, para. 22; Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Sri Lanka*, CCRP/C/LKA/CO/6, 26 April 2023, paras. 16-17. An Anti-Terrorism Bill, introduced to replace the Prevention of Terrorism Act but which has since been withdrawn, fell short of international standards. See: United Nations, Office of the United Nations High Commissioner of Human Rights, “Human Rights Concerns Over Two Draft Laws in Sri Lanka”, press briefing note, 13 October 2023.

serious human rights violations. Additionally, many individuals alleged to have been involved in enforced disappearances remain in positions of power, with some even promoted to more senior positions.⁹¹

IV. Impact of Enforced Disappearances on Victims

30. Enforced disappearances continue to have deeply negative psychological, social and economic consequences for victims, including the families left behind, and have caused social trauma within the broader community.⁹² Organizations such as the International Committee of the Red Cross and the official Sri Lankan Consultation Task Force on Reconciliation Mechanisms have highlighted the dire situation faced by many families.⁹³ Authorities' failures to acknowledge what has occurred and ensure accountability have exacerbated the harm suffered. The following two chapters highlight the opinions and experiences of victims of enforced disappearances as expressed to OHCHR during targeted consultations.⁹⁴

Psychological Effects on Relatives of Disappeared Persons

31. Enforced disappearances in Sri Lanka continue to harm victim families psychologically. Many relatives of disappeared persons interviewed by OHCHR described feelings of shock, fear, anger and helplessness after their relative's disappearance. One woman described her experience in the following terms:

"The day after the abduction, I do not remember. I was mad, overwhelmed. Then the next day a friend told me he found two bodies burnt in a cemetery...around the place there were pieces of human flesh. I was crazy. I started collecting the pieces around and put them in my bag...For many years... I acted as a mad woman. I was searching everywhere all day."

32. Decades later, victims cannot achieve closure. One woman, who witnessed her brother's arrest by the armed forces after surrendering in May 2009, stated:

"I will never forget. That will be with me until I die... I always have a heavy heart. He is my only brother. I think about him all the time. The last time I saw him, he asked for food. He was so hungry. Every time I eat, I think about him."

33. Most victim families cling to the hope that their loved ones may someday return. The absence of a body and the inability to hold funeral rituals has specific implications in Sri Lankan traditions and religious systems. Without the capacity to follow these practices, the spiritual presence of the disappeared continues within victim families and they remain at the centre of decision-making processes, putting the lives of families on hold amidst this uncertainty.
34. Some victims, particularly those whose relatives surrendered to the Sri Lankan Army in May 2009, expressed being weighed down by guilt. Parents who witnessed their children being taken into custody lamented their failure to protect them. Other victims felt culpable for their inability to find their relatives. The guilt precludes living a "normal" life, with family members reporting that to do so would amount to giving up on their disappeared family member.

⁹¹ A/HRC/30/CRP.2, para. 505; United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/20, 9 February 2021, para. 52.

⁹² Daya Somasundaram, "Collective Trauma in Northern Sri Lanka: a Qualitative Psychosocial-Ecological Study", *International Journal of Mental Health Systems*, 2007; Daya Somasundaram "Collective Trauma in the Vanni - a Qualitative Inquiry into the Mental Health of the Internally Displaced Due to the Civil War in Sri Lanka", *International Journal of Mental Health Systems*, 2010.

⁹³ International Committee of the Red Cross, "Living with Uncertainty: Needs of the Families of Missing Persons in Sri Lanka", July 2016; Consultation Task Force on Reconciliation Mechanisms, "Final Report of the Consultation Task Force on Reconciliation Mechanisms", vol. 1, (17 November 2016).

⁹⁴ The focus of consultations was to understand the experience and perspective of victims rather than undertaking an investigation into the commission of the enforced disappearance.

Feelings of guilt are intensified for mothers of disappeared children due to societal pressures, impacting their mental health and identity.

35. The failure of the authorities to clarify the fate or whereabouts of their relatives, further undermines psychological health. One man, who testified before a national Commission of Inquiry with the hope of learning about the fate and whereabouts of his son shared his frustration: “He [an official] took the picture of my son, and his case. He said he would come back to me in two weeks. Two weeks passed, then two months, then two years. Now it has been 32 years, and I am still waiting.”

Deficiencies in Psychosocial Support

36. Rehabilitation measures are one aspect of the reparation to which victims of serious violations are entitled, including psychosocial care and support for the victims, and measures that prevent their revictimization or secondary victimization.⁹⁵ However, there is currently a lack of available and/or accessible psychosocial services. In a 2020 report, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence highlighted the need for psychosocial support throughout Sri Lanka, especially in the North and East.⁹⁶ In 2020, for instance, there were only 123 psychiatrists (0.58 per 100,000 population), 61 psychologists (0.29 per 100,000 population), 624 mental health nurses, 72 social workers and 285 other specialized mental health workers in the country.⁹⁷ Access is also particularly limited for survivors of gender-based violence. Only 5 out of 39 victim families interviewed for this report reporting receiving psychosocial support. One woman searching for her husband after his arrest by the army in May 2009 explained: “I have a lot of things in my heart. A lot to tell but I cannot express it, I cannot open up. Every time I go to a demonstration, I get sick.” Some respondents described how they establish self-help groups to support each other’s emotional and psychosocial wellbeing, but also to reduce the security risks when searching for the disappeared. At the same time, helping others can also become overwhelming. One individual stated: “They always ask me, but I cannot listen to their stories. After hearing their stories my head will explode. I just cannot”.

Social Isolation and Ostracization of Victim Families

37. Victims referred to painful experiences of social isolation and ostracization. Victims feel that their pain and suffering is not understood by others. Community members encourage them to “move on” and accept that their disappeared relative is dead, leading many to curtail their social contacts. Some spoke of the need to protect their children from a hostile environment. One woman, whose husband was allegedly disappeared by the Karuna Group in 2009, explained that she avoided meetings and public places to shield her children from stigmatization. Knowledge that village heads (*Grama Sevakas*), other local officials or other individuals may have played a role in triggering the disappearance by acting as informants, creates additional distrust.
38. At times, the search for the disappeared has led to disputes and division within families. A woman whose husband was allegedly taken away by the police’s Special Task Force in February 2009, recounted that a visit by officials to deliver a court order strained family relationships: “I am not just isolated from the society but also my family, my siblings want to stay away from me because I am bringing problems to the family. They cannot understand my pain. They cannot understand how important this is.”
39. Beyond self-imposed isolation, some families find themselves socially ostracized. Avoidance behaviour on the part of neighbours, friends and relations – often used as a strategy of self-

⁹⁵ Committee on Enforced Disappearances, *Guiding Principles for the Search for Disappeared Persons*, CED/C/7, 8 May 2019, principle 3(6); CCPR/C/135/D/3321/2019, para. 10; Human Rights Committee, *Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, CCPR/C/158, 30 November 2016, para. 8.

⁹⁶ United Nations, Human Rights Council, *Visit to Sri Lanka - Report of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, A/HRC/45/45/Add.1, 18 June 2020, para. 62.

⁹⁷ See United Nations, World Health Organisation, “Mental Health Atlas Country Profile 2020: Sri Lanka”, 2020, p. 2.

protection against intimidation and reprisals from the authorities - reinforces a sense of social marginalization. A disappeared person's former possible affiliation (e.g., with the LTTE) might create suspicion of the person's family, leaving them afraid to speak openly about the disappearance for fear of guilt by association. Some women reported that they were pressured to stay away from events such as weddings and coming-of-age celebrations. This exclusion from the community was explained by the concept of "bad luck" (e.g., in some communities, widows are associated with bad omens bringing misfortune). Women whose husbands disappeared expressed the difficulty they face, being simultaneously treated as widows and women in active marriages, who must remain loyal to their husband. The intergenerational impact of disappearances has been documented elsewhere: with children being impacted by the loss of the parent figure and the rejection of families, leading to emotional pain, grieving and diminished self-esteem.⁹⁸

Impact on Social and Economic Rights

40. Enforced disappearances often have a devastating impact on the enjoyment of victim families' social and economic rights. Women and children have been impacted particularly negatively, as they contend with the complex financial, social and legal ramifications arising from the disappearance of their relatives. The trauma of losing someone to an enforced disappearance can lead to physical and psychological effects, which, together with the lack of adequate treatment, violate an individuals' right to the highest attainable standard of physical and mental health.⁹⁹ The economic and social marginalization compromises access to other rights, including access to adequate food and housing.¹⁰⁰ It particularly affects children's enjoyment of certain rights such as right to education (whether as a result of issues around civil status, or limited resources) as well their rights to an adequate standard of living (including nutrition), health care, and family life, all impacting on their survival and development.¹⁰¹
41. As the majority of disappeared persons in Sri Lanka have been male, women have often become the sole income-earner for a family, in a labour environment that poses many obstacles to women's participation, including risks of sexual harassment and exploitation.¹⁰² Many women consulted for this report stated that they survived on low paying and insecure employment such as working in paddy fields or sewing clothes. One woman described how the money she earned was only enough to support her children's education. Others reported exhausting all family possessions to survive: "I was in a difficult financial situation. My husband used to take care of everything... After he disappeared, I had to pay for food, clothes, education... I used my daughter's savings, I had to sell the gold and jewels."
42. The costs associated with the search for a disappeared loved one further compounds a family's financial hardships. Travel costs for repeated trips to locations where a disappeared person might have been sighted are additional and unanticipated costs. One woman whose husband was allegedly disappeared by the Special Task Force in February 2009 put it this way: "I had a hard time financially because I sold everything. I also had to borrow money from others. But I never stopped searching. I never stopped going everywhere, turning every stone."
43. Impoverishment also affects family life. A woman, whose husband disappeared after surrendering to the army in May 2009, described how her need to work meant a sister-in-

⁹⁸ Jeevasuthan Subramanian and others, "Implications of Enforced Disappearances on Women-headed Families in the Northern Province, Sri Lanka", *International Journal of Humanities and Social Science*, vol. 4, No. 4, (February 2014), p. 238, 240.

⁹⁹ ICCPR, art. 12; A/HRC/30/38/Add.5, para. 19.

¹⁰⁰ A/HRC/WGEID/98/2, para. 12; A/HRC/WGEID/98/1, para. 7.

¹⁰¹ See Subramanian and others, "Implications of Enforced Disappearances on Women-headed Families in the Northern Province, Sri Lanka", p. 236.

¹⁰² UN Women, *Gender Disparities and Labour Market Challenges: the Demand for Women Workers in Sri Lanka*, (United Nations publication, 2022); United Nations Development Programme, *State Duties: Women's Participation in Sri Lanka's Workforce and the UNGPs*, (United Nations publication, November 2021). Social Impact, USAID/Sri Lanka Gender and Social Inclusion Analysis, 2020, p. 11.

law raised her children, not her. Consequently, her now adult children do not visit, leaving her feeling isolated and lonely.

44. In several cases, victims reported that they were subjected to further financial exploitation. In these cases, spanning from 2008 to 2019, a person, sometimes identifying themselves as belonging to the Sri Lankan Army, *Grama Sevakas* (head of the community), or Eelam People's Democratic Party, informed the family that the person disappeared was alive and detained somewhere, and demanded the payment of a ransom to release them. OHCHR spoke to two victims who had been released due to payment of a ransom. In the other five cases where this form of exploitation was mentioned during the consultations, victims reported that they never saw their relatives again. One woman whose husband disappeared after being arrested by the army told OHCHR that the Sri Lankan Army asked her for LKR 800,000 (approximately USD 2,700) to see him again. They had her speak to someone on the phone who she believes was her husband, so she paid the money. However, after she paid, the individuals threatened her with a gun and her husband was not released.

V. Victims' Perspectives on Accountability

45. Many victims reported having been subject to concerted acts of harassment, intimidation, surveillance and violence, in the context of their searches, advocacy, and/or their participation in demonstrations or attempted commemorations.¹⁰³ This is consistent with OHCHR's previous reporting of the general negative environment in Sri Lanka towards victims of human rights violations as well as human rights defenders and activists.¹⁰⁴

Intimidation and Reprisals against Victims Searching for the Disappeared

46. Denied official information on the fate or whereabouts of their relatives and in the absence of comprehensive searches by authorities, many victims have searched for their relatives in offices or camps of the Sri Lankan Army or pro-government armed groups, only to be met with intimidation or outright physical violence. One woman whose husband was abducted in the early 1990s told OHCHR how she went twice to an army camp with her three children. She was pregnant at the time. Both times she was met with violence by soldiers, the second time being beaten with a wooden stick. Concerned for her unborn child, she left. Another woman who went to search her husband in a camp after her husband was detained in 2009 by the Karuna Group described how she and her mother were hit with sticks and kicked. Several women spoke of facing gender-based violence, including sexual harassment. One woman who went to a military camp to search for her husband was asked to leave her phone number, only for men in the camp to call her and sexually harass her multiple times a day and night. Outside the context of the consultations, OHCHR has received other reports of violence against women in similar circumstances, for example, being arrested, interrogated and tortured when visiting camps as part of their search.
47. One woman recounted systematic surveillance after filing a court case: "Since we filed the case, I have been followed by CID [Criminal Investigation Department]. Every time we go to court or when we come out of the court, they take photos, tell us not to go to court. But we tell them that we are not going to give up." In other cases, victims described how staff of the very Commissions of Inquiry that were supposed to investigate the enforced disappearances used the inquiry process to silence victims, blame them and exonerate the perpetrators. A man searching for his daughter who disappeared while they were displaced in 2009 recounted his testimony before the Paranagama Commission: "They kept blaming me. They

¹⁰³ See too findings of the WGEID: A/HRC/33/51/Add.2, para. 48, OHCHR: United Nations, Human Rights Council, *Situation of Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/54/20, 6 September 2023, paras. 33-36, and NGOs: e.g.: Association for Relatives of the Enforced Disappearances – North and East Provinces, "Persistence Amidst Impunity: The Struggle for Truth and Justice for Enforced Disappearances", 2024, pp. 22-23.

¹⁰⁴ United Nations, Office of the United Nations High Commissioner for Human Rights, "High Commissioner Presents Updates on Human Rights in Colombia, Guatemala, Honduras, Nicaragua, Cyprus and Sri Lanka", oral update, 1 March 2024; A/HRC/54/20, paras. 33-38.

kept asking me: how could you leave your kid alone to come to an army area?... I felt that they were accusing me. It only made me feel bad”.

- 48.** Male and female victims recounted numerous instances of threats and harassment at the hands of the army and the police, including its Criminal Investigation Department (CID) and Terrorist Investigation Division. One woman recounted that “They told me if I continue, they will cut my husband in pieces or that they will go after my children”. Intimidation was reported as being combined with court orders limiting the mobility of the relatives of disappeared persons or restricting their exercise of rights of peaceful assembly and freedom of expression, including the right of access to information. Another victim told OHCHR that CID officers intimidated her and her son by visiting their home often, even delivering a court order at a relative’s funeral. She also received strange calls. In some cases, victims reported additional serious human rights violations because of their search for loved ones, including being abducted, and subjected to arbitrary detention and severe beating amounting to torture. One man, searching for his father who was disappeared in 2009 explained how he was interrogated and questioned as to whether he was seeking to revive the LTTE.

Truth

- 49.** All victims consulted considered discovering the truth of the fate and whereabouts of their loved ones and the circumstances of their disappearance to be of the utmost priority. Together with official acknowledgment of what had happened, this truth was seen as intrinsically interlinked with other aspects of accountability. If the truth was revealed, justice would have to be done and reparation granted on the basis of the harms suffered.
- 50.** Establishing the truth was seen by the victims as a crucial step towards finally giving them closure. As one woman stated: “Our psychological problems come from the disappearance. Not from anything else... Find my husband and you will get rid of the source of my problem. Give me the truth and my problems will go away.”
- 51.** Individual and collective truth were seen as two sides of the same coin. As one woman searching for her brother since he surrendered in May 2009 said:

“We only need the truth. If he is alive or not. To the international community I say that I saw when my brother was taken away. I saw all the boys with him... Can you imagine how many people were taken away? This should be recognised. We should insist to have a count on how many were taken away.”

- 52.** Victims referred to the need to unearth more detail concerning the patterns of disappearances. They hoped that accountability initiatives would clarify whether violations were part of a plan of the State, the LTTE, paramilitary groups, political organisations or other movements. In order to ensure non-recurrence of the crime, it was necessary to understand how and why enforced disappearances occurred *en masse*, and what factors facilitated their commission. This type of truth would in turn contribute to “healing the memories” of the entire nation, not just victim communities. Whilst expressing scepticism about current Government proposals for truth seeking, victims expressed support for additional initiatives that might be undertaken by the State in this “truth-seeking space”, including the identification of human remains found in mass graves, and making public the names of persons taken into government custody or held in camps at the end of the war.

Criminal Justice

- 53.** Victims considered criminal justice as an important means of addressing past violations. Victims stated a strong desire for perpetrators to be held criminally liable. In particular, they advocated that State representatives, and generally those in power at the time, should be held accountable not only for the crimes they ordered but also for their failure to protect citizens. They identified those holding the highest rank as the most responsible for enforced

disappearances. One male participant in a focus group summarized: “If the most responsible are not arrested, nothing will change. But they should not be arrested [just] on any ground. It must be related to the war crimes committed.” Taking action against these senior levels was seen as linked to non-recurrence: both through removing those in power and deterring future violations.

54. Whilst strongly supportive of investigations and prosecutions, most of the victims consulted considered that the Sri Lankan State (including the Sri Lankan justice system) was unwilling and unable to deliver justice. Anger was expressed at how successive governments had treated alleged perpetrators, in particular noting that alleged perpetrators had been “forgiven” and some elevated to higher official positions. Other sources of resentment included the lack of progress in filed cases and the granting of presidential pardons to convicted officers. Victims felt a sense of injustice when comparing their situation to alleged perpetrators who they saw as enjoying a “peaceful pensioned retirement”.
55. On the other hand, victims supported criminal justice proceedings outside Sri Lanka (e.g., third party States under universal jurisdiction). Victims stated that such cases “prevent the authorities from closing the chapter”, and provide hope to the victim community. A desire was expressed to “make clear to the government and victims that now is the time for the international community to take action and investigate and prosecute.” Some looked to the international community to refer the situation of Sri Lanka to the International Criminal Court.

Reparations and Guarantees of Non-recurrence

56. For victims, any payments offered as reparations need to be accompanied by an acknowledgement of responsibility and provision of the truth. One woman for instance, stated “It is not about whether we should accept the money but why do they want to give money? ... Because they were killed? If yes, then say so! We will be able to make peace with ourselves, with the dead, and maybe with them. But giving money without telling us anything?”
57. Most of the victims, particularly those from the end of the conflict, shared the perception that the reparation payments being offered by the Sri Lankan state were a tool to divert attention from justice and to buy people’s silence. One woman, whose daughter disappeared after surrendering to the Sri Lankan Army in May 2009, stated: “If we take this money, they will never tell us anything. Never. I want to know if my daughter is dead or alive.”
58. Some queried the quantum of payments offered in the past:

“They offered LKR 100,000 (approximately USD 340). And they expect we take it? Is it the price for a life? My husband was a hard worker. I am sure he could have earned this in a month. Fourteen years of waiting, of hoping... is it worth 100,000? Now they say they will give us LKR 200,000 (approximately USD 680) but what is the point?”

59. Some also pointed to apparent inequities in the quantum of reparations. One woman whose son disappeared in the East in the mid-1990s stated: “...when the Paranagama Commission¹⁰⁵ came, they made a statement: they will provide reparations LKR 50,000 (approximately USD 170) for the family. Some mothers did not even want to receive this but those who need money, have loans or other financial issues came to take the money.”
60. Victims were more receptive to immediate financial support to meet basic needs for their families, and to support their continued search for truth and justice. Rather than being seen as reparations (which most saw as financial compensation matching the amount the disappeared family member would have earned and used to support the family), immediate relief payments were seen as smaller payments to alleviate the struggle many families had to

¹⁰⁵ See para. 72 of this report.

survive. None of the victims with whom OHCHR consulted, however, had received any interim relief payments (see chapter 5).

- 61.** Victims were generally opposed to receiving death certificates. Some victims referred to legal or administrative difficulties they were facing as the reason for reluctantly accepting a certificate of death. Officially declaring their relative as dead was seen as the only option to obtain and exercise certain benefits and rights. Some victims consulted in the East, especially those of enforced disappearances in the 1990s, described situations where they involuntarily received death certificates, including with details of death which they regard as deflecting responsibility. One man stated:

"I received a death certificate that I did not ask for. The certificate was delivered with a court order... On the certificate, they wrote that my son was part of a group that was taken away by terrorists and who were killed... Of course, they say terrorists to refer to the LTTE or other armed groups. They were trying to cover up the crimes."

- 62.** Several families reported when they sought death certificates, they were forced to sign that their disappeared relatives were LTTE members. All who had received death certificates recalled that the certificates stated that the perpetrators were "unknown". One man from the East recounted that the police told them "if you claim that the army took them, you will never get any compensation...", so they felt they had no option. This left at least one victim to believe that because of what was on the certificate, "[w]e will never be able to seek the truth anymore".
- 63.** The creation of a certificate of absence in 2019, which permitted recognition of the status of a disappeared person as "missing" rather than deceased, was intended to address practical issues faced by families of the disappeared. Several victims, however, expressed fear that a certificate of absence would automatically be converted into a certificate of death after a period. Another victim reported his unsuccessful attempt to have a previously issued certificate of death (which he had not requested) converted to a certificate of absence. However, this change was refused, leaving him ineligible for certain allowances and with his son's case no longer considered amongst the disappeared.
- 64.** Victims stressed the importance of non-financial aspects of reparations such as acknowledgment and memorialisation. Acknowledgment was seen as linked to the openness to change to ensure that disappearances did not occur in the future. Memorialisation was regarded as providing a necessary space to grieve, as well as giving opportunities for families to develop a shared understanding of events. Victims reported having often faced obstructions while trying to engage in memorialization activities, including harassment and intimidation by intelligence officers and police obtaining orders from Magistrates to prevent demonstrations. Amongst women victims in particular, grieving rituals were seen as powerful ways to deal with the psychological impact of their loss, to assist in the rehabilitation of their social status and restore cohesive communities.
- 65.** Victims expressed clear concerns about the risk that enforced disappearances might continue to be committed in Sri Lanka. They pointed to the systematic use of enforced disappearance, in different periods, locations and with various groups targeted. Questions were raised about the ability and willingness of the State to end the practice. Enforced disappearance was described as an "effective tool" to "make people worry or afraid to take action against the government". As one woman in a focus group with victims from the JVP period expressed it: "...governments lead those hoping for a different future to an uprising... and then use illegal means to crush it ... we have no hope that any new government will act otherwise." What victims believed was required was a real paradigm shift, accompanied by government commitment, robust legal protections, exposure of the truth, and an end to the prevailing impunity.

VI. Accountability Initiatives within Sri Lanka: Gaping Deficits

A. Truth Seeking

I. Collective Truth: History of Numerous Cols with Little Follow-up Action and Resultant Trust Deficit

66. As the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence has noted, Sri Lanka is no stranger to truth-seeking mechanisms, having had far more than most countries. He concluded:

*“Some of those commissions have unearthed significant information, stimulated public debate and, occasionally, made useful recommendations. The view of critics that such commissions have been established to deflect international pressure and calls for judicial investigations, however, is given credence by the commissions’ weak mandates, problematic membership, lack of resources, procedural opacity, poor collaboration from the Government, lack of publicity of some of their reports and the overall lack of implementation of their recommendations”.*¹⁰⁶

67. Indeed, the convening of a Commission of Inquiry (Col) has been the most common policy response of the Sri Lankan Government to allegations of enforced disappearances committed on a large scale, often in response to international pressure and scrutiny by the Human Rights Council. In its recent report to the CED, Sri Lanka referred to having had eight inquiries which dealt with enforced disappearances.¹⁰⁷ One former OMP Commissioner pointedly remarked that “Sri Lanka has a commission addiction”.¹⁰⁸ Some of these inquiries have provided significant insights into the patterns of enforced disappearances. However, the lack of follow-up action, gives rise to the perception that Cols have been used to mask inactivity on “harder edge” aspects such as criminal justice or systemic reform to prevent recurrence. Regrettably, only a few of the reports of the Cols have been made public (and then selectively and sometimes years after the Col’s conclusion). Recommendations of the inquiries appear to have languished. The most recent Presidential Col, chaired by Justice Nawaz, noted there had been a lack of political will to implement recommendations.¹⁰⁹ The analysis below highlights the operation of several significant Cols.

Zonal Commissions of Inquiry (1994) and the All-Island Disappearances Commission of Inquiry (1998)

68. In 1994, Zonal Commissions of Inquiry (Zonal Cols) were established to examine disappearances that took place in three different areas of the country. An All-Island Disappearances Commission of Inquiry (All-Island Col) was similarly established in 1998. The three Zonal Cols and the All-Island Col served a fact-finding and documentation purpose, at least partially, although they lacked the capacity to investigate all alleged disappearance cases submitted to them. Furthermore, these Cols were limited in their temporal scope to disappearances from 1988, despite numerous enforced disappearances having occurred prior to this time. Despite this limitation, the Zonal Cols “established” some 16,742 cases of disappearances from 27,526 alleged cases analysed. The All-Island Col (examining cases

¹⁰⁶ A/HRC/45/45/Add.1, para. 35. As to the overuse of Commissions of Inquiry, see also United Nations, Special Procedures of the Human Rights Council, “Observations by the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Mr. Pablo de Greiff, on the Conclusion of his Recent Visit to Sri Lanka”, 11 April 2015.

¹⁰⁷ CED/C/LKA/1, paras. 37-55.

¹⁰⁸ Mirak Raheem, “Sri Lanka’s Commission Addiction”, *Groundsview*, 8 May 2023.

¹⁰⁹ The Presidential Commission of Inquiry to Investigate and Inquire into, Take Necessary Action and Report on the Findings and Recommendations of Preceding Commissions of Inquiry and Committees which had been Appointed to Investigate into Human Rights Violations, Serious Violations of International Humanitarian Law and Other Such Serious Offences, *Commission Report: Volume I*, December 2023, see Executive Summary and para. 1156.

that the Zonal COIs had not had the capacity to examine) “established” a further 4,473 cases from some 10,136 received.¹¹⁰ The Zonal Cols reports were published in 1997, and the All-Island Col report in 2002, though their contents are not widely accessible. Attachments and annexes, containing *inter alia* the names of allegedly responsible individuals and other sensitive information were kept out of the public domain. They were only shared with the President of Sri Lanka.

69. The Zonal Cols reportedly identified names of allegedly responsible individuals for 1,681 cases.¹¹¹ The All-Island Col reportedly identified names of persons implicated in over 300 additional cases of disappearances.¹¹² According to information published in the media in 1998, within one of the annexes of the 1994 Central, North Western, North Central and Uva Disappearances Commission, for instance, reference was made to four ministers, including the then Justice Minister, as well as 27 Members of Parliament, 14 provincial council members, 12 local level administrative officers, 20 police superintendents, 51 police officers-in-charge, 12 army captains and 4 majors as being implicated in enforced disappearances.¹¹³ The 1994 Northern and Eastern Disappearances Commission reportedly concluded that 90 per cent of cases were at the hands of the security forces: army, navy, air force and the police.¹¹⁴
70. In accordance with their mandates, all four Cols made detailed recommendations. Topics covered included modalities for prosecutions, relief and compensation measures, as well as broader constitutional, legislative and institutional reforms to prevent the re-occurrence of enforced disappearances.¹¹⁵ Had there been adequate political will, these reports may have provided a foundation for effective remedies and prevented further cases of enforced disappearances. To take one example, the All-Island Col and one of the Zonal Cols recommended the establishment of an independent human rights prosecutor to be responsible for the impartial investigation and prosecution of enforced disappearance cases. The Zonal Cols also recommended the establishment of a Human Identification Centre to train forensic pathologists and scientists in all aspects of identification of human remains, and to provide modern state of the art technology for this purpose. Extensive government powers under emergency regulations were recommended to be minimized. In the absence of action to implement these recommendations, and to address the structural factors enabling disappearances,¹¹⁶ additional waves of disappearances continued into the 2000s.¹¹⁷

Lessons Learned and Reconciliation Commission (2011)

71. The Lessons Learned and Reconciliation Commission (LLRC) was mandated to inquire and report on “the facts and circumstances which led to the failure of the ceasefire agreement” of 2002 and the events up to 12 May 2009.¹¹⁸ It was not given a specific mandate to investigate individual cases of disappearances. However, during its public sittings and field visits, the LLRC received many accounts of disappearances, and made specific

¹¹⁰ See “Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island),” 2001; “Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Western, Southern and Sabaragamuwa Provinces,” 1997; “Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces,” 1997. OHCHR has not had access to the full published reports on these Cols, although the transcribed extracts of these reports have been published online by the Asian Human Rights Commission. Available at: https://web.archive.org/web/20071005081836/http://www.disappearances.org/news/mainfile.php/reports_srilanka/. (accessed on 4 March 2024).

¹¹¹ Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Fourth Periodic Report: Sri Lanka”, CCPR/C/LKA/2002/4, 18 October 2002, para. 156.

¹¹² *Ibid.*

¹¹³ Pinto-Jayawardena, “Post-War Justice in Sri Lanka”, p. 80, citing Imran Vitatchi, “Disappearances Commissions point finger at UNP Politicians and Security Officers”, *The Sunday Times*, 15 March 1998.

¹¹⁴ Pinto-Jayawardena, “Post-War Justice in Sri Lanka”, p. 81, citing the Final Report of the 1994 Northern and Eastern Disappearances Commission, Sessional Paper No VII, 1997, at p. 62.

¹¹⁵ See Kishali Pinto-Jayawardena, *A Legacy to Remember, Sri Lanka's Commissions of Inquiry, 1963-2002: A Reference Guide to Commission Reports with a Tabulated List of Recommendations*, (The Law & Society Trust, Colombo, 2010), pp. 82-139.

¹¹⁶ Pinto-Jayawardena, “Post-War Justice in Sri Lanka”, p. 31.

¹¹⁷ See Chapter III of this report.

¹¹⁸ Presidential Order No. CA/3/3/24, cited in Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC), Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011, pp. ii-vii.

recommendations on the topic in its final report. In recognition of the “complexity and magnitude” of the issue, the LLRC also recommended that a Special Commissioner of Investigation be appointed to investigate alleged disappearances, and to provide material to the Attorney-General to initiate criminal proceedings as appropriate.¹¹⁹ It further recommended that the Office of the Commissioner be provided with experienced investigators to collect and process information, and that the mechanism should devise a centralized system of data collection at the national level, integrating all information with regard to missing persons currently being maintained by different agencies.¹²⁰ The LLRC called for a comprehensive approach to “missing persons” as a matter of urgency, and concluded that the absence represented “a serious obstacle to any inclusive and long-term process of reconciliation”.¹²¹ The LLRC also noted that Governments’ failure to implement past Commissions’ recommendations had given rise to “understandable criticism and skepticism regarding government appointed Commissions from which the LLRC has not been spared”.¹²²

Paranagama Commission (2013)

72. In the wake of the LLRC, the then President established another Commission of Inquiry chaired by retired Justice Paranagama in 2013. This Commission’s initial mandate was, *inter alia*, to inquire into persons who resided in the Northern and Eastern Provinces who “have been abducted or have disappeared” between 10 June 1990 to 19 May 2009.¹²³ Its mandate was subsequently expanded to include conduct of hostilities related issues (with a particular emphasis on violations by LTTE), diluting the focus on enforced disappearances.¹²⁴ The Interim Report of the Commission (dealing more specifically with disappearances) was not made public. From a copy of the report OHCHR had access to, this Commission received some 13,378 complaints from 25 Districts,¹²⁵ with a majority of the cases of disappearance relating to the 2005-2009 period. Its Interim Report identified 10 cases in which there was “prima facie evidence” against members of the security forces named in public hearings, recommending domestic legal action against them.¹²⁶ A further 59 cases were highlighted for in-depth investigation with a view to recommending judicial action.¹²⁷ Its Final Report included some generic statements about the possibility of persons in custody having gone abroad, underground or changed their identity, whilst maintaining the need for truth to be ascertained about the majority of disappeared persons whose fate remained unknown.¹²⁸ The Commission made limited recommendations about enforced disappearances in its Final Report. Notably, it recommended the usage of international technical assistance and observers in relation to conflict-related criminal proceedings in the domestic setting.¹²⁹ However, this recommendation was not implemented.

Civil Society Organizations’ Views on the Contributions of Cols

73. When asked about the contribution of previous Commissions of Inquiry to address Sri Lanka’s disappearances, civil society organizations (CSOs) provided varied responses. Some

¹¹⁹ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011, para. 5.48.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*, para. 5.36.

¹²² *Ibid.*

¹²³ The Gazette of the Democratic Socialist Republic of Sri Lanka, No. 1823/42, 15 August 2013. This mandate period somewhat overlapped with those of the earlier Zonal and all-Island Commissions of Inquiry and did not permit examination of any enforced disappearances post-2009: see United Nations, Human Rights Council, Oral Update of the High Commissioner for Human Rights on *Promoting Reconciliation and Accountability in Sri Lanka*, A/HRC/24/CRP.3/Rev.1, 25 September 2013, para. 13; see also Centre for Policy Alternatives, *A Commentary on the Presidential Commission to Investigate Missing Persons During the Period of June 1990 – May 2009 in the Northern and Eastern Provinces: Issues and Concerns in the Search for Truth, Justice and Accountability*, March 2014, p. 4.

¹²⁴ A/HRC/30/CRP.2, para. 518.

¹²⁵ Presidential Commission to Investigate into Complaints Regarding Missing Persons, “Interim Report”, April 2015.

¹²⁶ *Ibid.*, Annex H.

¹²⁷ *Ibid.*, Annex L.

¹²⁸ Presidential Commission to Investigate into Complaints regarding Missing Persons,

“Report on the Second Mandate of the Presidential Commission of Inquiry into Complaints of Abductions and Disappearances”, August 2015, p. 108, para. 449.

¹²⁹ *Ibid.*, para 616.

believed that these Commissions had assisted in documenting basic information around cases of enforced disappearances which the State could not then question given the State was the entity that established the Commissions. Others viewed the Commissions with greater cynicism, perceiving them as established only to satisfy the international community. One person consulted by OHCHR considered the Commissions had created “repeated trauma to those who access such [Commissions of Inquiry] with hopes. And no relief”. The non-cooperation of the command chain of the security apparatus was seen as a weakness, whilst some saw the Commissions as fundamentally biased in favour of the security apparatus.

A Proposed New Truth-seeking Mechanism?

- 74.** In 2023, the Government of Sri Lanka announced plans to establish a National Unity and Reconciliation Commission. An interim Secretariat has been established, and draft legislation was gazetted in December 2023, without adequate and meaningful consultation with victims and civil society. The High Commissioner has previously stressed the need for a conducive environment for any credible truth-seeking mechanism,¹³⁰ and in March 2024, noted that such an environment remained absent.¹³¹ There needs to exist an enabling environment for victims and witnesses to take part in the planning, design and implementation of any mechanism without fear of intimidation, threats or reprisals.¹³² The failure of effective follow-up on previous Commissions has created deep-rooted mistrust among the population, in particular among victims and affected communities. As such the establishment of another *ad hoc* Commission without genuine consultation and in the absence of a comprehensive transitional justice strategy and appropriate linkages with already existing or future mechanisms, such as a judicial mechanism, is likely to further entrench the serious trust gap. Any credible new entity would require that Commissioners of integrity and independence be appointed in a transparent fashion, with the involvement of victims and civil society, and that the Commission is able to operate without political interference. Its report should be made public and there should exist political will both to support the functioning of the institution, and to seriously consider and implement its findings. Any new body needs to transparently build on previous Commissions of Inquiry, rather than duplicating their work, including recommendations that remain relevant but unimplemented.
- 75.** From the consultations carried out by OHCHR, it is apparent that there is significant skepticism amongst victims and CSOs in relation to the proposed truth-seeking mechanism. During one focus group, all victims agreed with the statement of one participant: “I have no faith that a new commission or new mechanism will produce any result... The government does not want to do anything. So how could I trust that anything will ever come out of this?” To date, there has not been adequate consultation on the establishment of such a body or the draft legislation, nor the type of trust-building or development of consensus to allow for an effective truth commission. CSOs have stressed that truth seeking alone is not sufficient: it must sit alongside appropriate judicial processes to establish individual criminal responsibility.¹³³ The HRC-SL has similarly stressed the need for a comprehensive approach to transitional justice, including accountability, reparations and non-recurrence, and has called upon the Government to establish a mechanism for the investigation and prosecution of gross violations of human rights and grave crimes. It has also called for, *inter alia*, a high-level Committee to monitor implementation of “constructive recommendations” of previous

¹³⁰ See A/HRC/54/20, para. 65(c).

¹³¹ United Nations, Office of the United Nations High Commissioner for Human Rights, “High Commissioner Presents Updates on Human Rights in Colombia, Guatemala, Honduras, Nicaragua, Cyprus and Sri Lanka”, oral update, 1 March 2024.

¹³² A/HRC/54/20, para. 65(c).

¹³³ See e.g., Association for Relatives of the Enforced Disappearances – North and East Provinces, “Rejection of the National Unity and Reconciliation Commission and Calling for an International Mechanism to Achieve Remedial Justice”, 3 August 2023; Adayalam Centre for Policy Research and others, “Joint Statement: On the Inadequacy of a ‘Truth and Reconciliation Mechanism’ to Achieve Post-War Transitional Justice”, 19 July 2023; Women’s Action Network and others, “Joint Statement”, July 2023 quoted in “Civil Society Questions Proposed Truth-Telling Mechanism”, *The Morning*, 15 July 2023; North-East Coordinating Committee, “Sri Lanka’s Proposed National Unity and Reconciliation Commission Amidst the Continuing State Sponsored Oppressions in Northern and Eastern Province”, 20 July 2023. See also: Adayalam Centre for Policy Research and Others, “Concerns Regarding the Proposed Truth, Unity and Reconciliation Commission”, Joint Civil Society Letter to Director-General of Interim Secretariat for Truth and Reconciliation Mechanism, 7 March 2024.

inquiries, including the LLRC, and to undertake initiatives to inform the community of the results of previous inquiries.¹³⁴

II. Clarifying the Fate and Whereabouts: Office on Missing Persons

- 76.** The vast majority of victim families in Sri Lanka remain without substantive knowledge of the fate and whereabouts of their loved ones. As the WGEID has elaborated, the requirement for clarification is met only where both the fate and whereabouts are determined.¹³⁵ According to a January 2007 WGEID report, of the 12,319 cases that were referred by the WGEID to the Sri Lankan authorities, 6,570 were considered “clarified” on the basis of information coming from the Government (6,530 cases) or another source (40 cases).¹³⁶ The number has not substantially risen during more recent years. The Sri Lankan Government’s 2023 report to the CED refers to 6,598 “clarified cases” (representing an increase of only 28 cases since 2007).¹³⁷ It is not evident, however, that cases considered “clarified” in the 2007 report would meet the criteria used now by the WGEID for clarification of the fate and whereabouts.¹³⁸ The WGEID’s current working methods state that cases can be reopened with the WGEID.¹³⁹
- 77.** The HRC-SL established a unit in 2004 to collect all available information on the disappearances of persons from 1988 onwards and enter them into a national database. It started collecting relevant data from previous Commissions (e.g. the Zonal and All-Island Commissions of Inquiry and the Committee on the Disappearances of Persons in the Jaffna District Region between 1990 and 1997).¹⁴⁰ The HRC-SL was specifically mandated to inquire further into 2,200 complaints of missing persons that had not been inquired into by the All Island Commission,¹⁴¹ and a Committee of Inquiry was established by the HRC-SL for that purpose.¹⁴² In 2006, after a change of its leadership, the HRC-SL stated that it was discontinuing investigations “for the time being, unless special directions are received from the government”. The HRC-SL submitted a report to the Presidential Secretariat in 2007, including recommendations on “the making of payments, in terms of compensation”.¹⁴³
- 78.** In 2016, the Government of Sri Lanka established the Office on Missing Persons (OMP). This was one of the commitments of the Sri Lankan Government reflected in Human Rights Council resolution 30/1 (2015).¹⁴⁴ The OMP is the first permanent State institution in Sri Lanka with a mandate to determine the fate and whereabouts of individuals who went missing in the context of the conflict, political unrest, civil disturbances or as a result of enforced disappearances as defined in the ICPPED, as well as those identified as members of the armed forces or police “missing in action”.¹⁴⁵ The OMP uses the umbrella term of “missing” to refer to all these categories.¹⁴⁶ The OMP is empowered to, inter alia, search for and trace missing persons, and to clarify the circumstances in which persons went missing, make recommendations to relevant authorities to address the incidence of missing persons, protect

¹³⁴ Human Rights Commission of Sri Lanka, “Press Notice: Observations and Recommendations on the Commission for Truth, Unity and Reconciliation in Sri Lanka Bill”, Press Notice No: HRC/P/i/E/17/01/24, 17 January 2024.

¹³⁵ Working Group on Enforced or Involuntary Disappearances, *Methods of Work of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/WGEID/1, 28 September 2023, para. 28.

¹³⁶ United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/4/41, 25 January 2007, para. 394. Further detail is not provided of the nature of the clarification, though the report notes the status of the individual as “dead” in 6,444 cases.

¹³⁷ CED/C/LKA/1, para. 54.

¹³⁸ Working Group on Enforced or Involuntary Disappearances, *Methods of Work of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/WGEID/1, 28 September 2023, para. 28. This replaced the former working methods which only required clarification of the fate or whereabouts of the disappeared person. See, for example, United Nations, Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/4/41, 25 January 2007, para. 11.

¹³⁹ Working Group on Enforced or Involuntary Disappearances, *Methods of Work of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/WGEID/1, 28 September 2023, para. 32.

¹⁴⁰ Human Rights Commission of Sri Lanka, “2004 – 2005 Annual Report of the Human Rights Commission of Sri Lanka”, pp.72-73.

¹⁴¹ Presidential Directive No. SP/6/N/214/1947 dated 14th March 2005, as cited by HRC-SL.

¹⁴² Human Rights Commission of Sri Lanka, “Annual Report 2006 and 2007”, pp. 26-27.

¹⁴³ Human Rights Commission of Sri Lanka, “Annual Report 2006 and 2007”, pp. 26-27.

¹⁴⁴ United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka*, A/HRC/RES/30/1, 14 October 2015.

¹⁴⁵ Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, section 27.

¹⁴⁶ *Ibid.*, section 27.

the rights and interests of missing persons and their relatives, identify avenues of redress and collate data related to missing persons and centralize all available information in a database.¹⁴⁷ The OMP has been given broad legal powers of investigation, including powers to summon persons, request assistance from authorities, seek court orders for exhumations and searches of premises.¹⁴⁸ It is also empowered to enter police stations, prisons and other places of detention (e.g., army camps) where persons may have been detained, without requiring a warrant.¹⁴⁹ The OMP may report cases to the relevant law enforcement or prosecuting authority, after consultation with relatives and in “due consideration of the best interests of the victims, relatives and society”.¹⁵⁰ However, in practice, the OMP does not appear to have made extensive use of these powers.

- 79.** In its public reports, the OMP has stated that it accessed the records of past Commissions of Inquiry to digitize the relevant records.¹⁵¹ Interlocutors have, however, noted some shortcomings with respect to the OMP database, including that disappeared persons have been registered according to their place of residence, rather than place of disappearance, making searches and analysis of data difficult,¹⁵² and that the data is not accessible to families of the disappeared and their representatives.
- 80.** Over the last seven years, rather than carrying out thorough investigations to clarify the fate and whereabouts of individuals, the OMP appears to have taken what might be described as an administrative, “case management approach”.¹⁵³ This has focused on registering disappearances and issuing reports in order to enable the Registrar General to issue a certificate of death or a certificate of absence.¹⁵⁴ According to the Sri Lankan authorities, of the 6,025 cases categorized as Phase 1 cases (those between 2001-2021), 5,221 “preliminary inquiries” are said to have been concluded.¹⁵⁵ Of these, 239 cases have been referred to the Registrar General for the issuance of a certificate of death¹⁵⁶ and 1,313 families have been assisted to get a certificate of absence.¹⁵⁷ The preliminary inquiries carried out appear very narrow, focusing on the eligibility of the victim families’ entitlement to financial assistance.
- 81.** The OMP’s search for missing persons has barely begun. In a report on its progress, the OMP set a low expectation of being able to conclude two to three cases in 2023.¹⁵⁸ By way of contrast, the Government of Sri Lanka informed the Human Rights Council in March 2024 that the OMP’s Tracing Unit had succeeded in resolving 19 cases: with 16 persons found alive, and three deceased.¹⁵⁹ The details of the cases have not been publicly provided. In some cases, families of the disappeared have provided extensive documentation to the OMP, without triggering further OMP investigation: exemplified by the lack of progress on five

¹⁴⁷ Ibid., section 10.

¹⁴⁸ Ibid., sections 12(c)(ii),(d),(e),(g).

¹⁴⁹ Ibid., section 12 (f).

¹⁵⁰ Ibid., section 12(i).

¹⁵¹ CED/C/LKA/1, para. 49.

¹⁵² International Transitional Justice Project and Journalists for Democracy in Sri Lanka, “Sri Lanka: Briefing Note 3, Enforced Disappearances”, February 2021.

¹⁵³ United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/51/5, 4 October 2022, para. 42.

¹⁵⁴ In 2016, the Sri Lankan Government enacted the Registration of Deaths (Temporary Provisions) (Amendment) Act, No. 16 of 2016, in order to allow issuance of certificates of absence.

¹⁵⁵ Permanent Mission of Sri Lanka to the United Nations in Geneva, “Statement by Her Excellency Himalee Arunatilaka, Ambassador and Permanent Representative of Sri Lanka to the United Nations in Geneva at the 55th Session of the United Nations Human Rights Council”, statement, 1 March 2024.

¹⁵⁶ Ibid., p. 4.

¹⁵⁷ Sri Lanka, “Observations of the Government of Sri Lanka (GoSL) to the Advanced Unedited Version of the Written Update titled ‘Situation of Human Rights in Sri Lanka’ by the UN High Commissioner for Human Rights pursuant to HRC Resolution 51/1”, 2023, p. 7.

¹⁵⁸ The Office on Missing Persons (Sri Lanka), “Progress as at July 12, 2023”, July 2023, p. 4.

¹⁵⁹ Permanent Mission of Sri Lanka to the United Nations in Geneva, “Statement by Her Excellency Himalee Arunatilaka, Ambassador and Permanent Representative of Sri Lanka to the United Nations in Geneva at the 55th Session of the United Nations Human Rights Council”, statement, 1 March 2024. In 2023, the Government of Sri Lanka reported that of the 14 persons persons found alive, 11 were found alive in Sri Lanka and 3 migrated abroad: Sri Lanka, “Observations of the Government of Sri Lanka (GoSL) to the Advanced Unedited Version of the Written Update”, 2023, p. 7.

cases submitted by the Mothers of the Disappeared in 2019.¹⁶⁰ The fact that the OMP does not seem to have exercised its extensive legal powers e.g. to interview security personnel, demand records of security forces or visit places of detention, has frustrated families and casts serious doubts about the OMP's willingness to deliver on its mandate. Whilst the OMP has pointed to disruptions caused by the COVID-19 pandemic and staffing-related issues, it seems that the OMP has not prioritized in-depth investigations.

82. The investigation of mass graves can provide crucial evidence about the fate and whereabouts of disappeared persons as well as about crimes and other gross violations of human rights and serious violations of international humanitarian law. There is concern that the Sri Lankan state, including the OMP, is failing in its obligation to properly locate, disclose, protect and preserve mass gravesites, and to preserve, exhume and analyse remains within mass graves.¹⁶¹ The OMP has played an observer role in court cases on the investigation of human remains and exhumation of mass graves in Mannar, Mullaitivu and Kilinochchi, though it does not appear to have made proactive efforts to investigate other suspected mass grave sites.¹⁶² In September 2019, the WGEID expressed concerns that the reinvestigation of the Matala mass grave had stalled, and that proactive efforts had not been made to investigate other suspected mass grave sites.¹⁶³ It also noted information that in some sites, vital evidence found during construction and other activities was not being reported to the authorities.¹⁶⁴ The huge discrepancy relating to the dating of the remains within available reports also left doubts as to the possible contamination of the exhumed remains.¹⁶⁵ In August 2023, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, expressed similar concerns about the preservation and exhumation of the Kokkuthoduvai mass grave in Mullaitivu.¹⁶⁶ The OMP has previously called for further legal reform in relation to the identification of human remains and a multidisciplinary coordination system.¹⁶⁷

83. The OMP faces a lack of trust from victim communities. A pre-existing wariness has been compounded by factors such as the lack of diversity in the staffing (in particular a lack of Tamil staff), and the OMP's failure to deliver real results for victim families. One respondent summarized the feeling of disillusionment: "What they do is collect information. They take the names and make files. They give us a case number and that is it. They told us that if we want progress then we should find witnesses for our case! Who would bring witness? No one wants to testify before the OMP." Another victim, a woman from the North, similarly referred to the perceived ineffectiveness of the OMP:

"We received letters telling [us] they want to process our case, that they have information but that they need more data. They ask me to come. If I do not go, they will send me more letters and after three-four letters they will threaten to take legal action against me for non-cooperation. (...) and then what did they do with that? I went to the office - claiming a right to information - to ask for any information about my husband...but they refused to disclose any information for security reasons."

84. Whilst initial appointees to the OMP enjoyed widespread respect, subsequent appointment of some Commissioners of questionable impartiality by the Government of the then President Gotabaya Rajapaksa (2019-2022) has further eroded the perceived legitimacy of the OMP.

¹⁶⁰ Association des Étudiants Tamouls de France and Association for Relatives of the Enforced Disappearances – North and East Provinces, "Oral Statement at the 51st Regular Session of the Human Rights Council", statement, 27 September 2022.

¹⁶¹ United Nations, General Assembly, Report of the Special Rapporteur of the Human Rights Council on Extrajudicial, Summary or Arbitrary Executions: Mass Graves, Highlighting the Multitude of Sites of Mass Killings and Unlawful Deaths Across History and the World, A/75/384, 12 October 2020, para. 88.

¹⁶² Working Group on Enforced or Involuntary Disappearances, Follow-up on the Visits of the Working Group on Enforced or Involuntary Disappearances to Peru and Sri Lanka, 10 September 2019, A/HRC/42/40/Add.1, para. 13. A/HRC/51/5, para. 42.

¹⁶³ A/HRC/42/40/Add.1, para. 13.

¹⁶⁴ Ibid., para. 13.

¹⁶⁵ Ibid., para. 81(g).

¹⁶⁶ Special Rapporteur on extrajudicial, summary or arbitrary executions and others, AL LKA/6/2023, 14 August 2023.

¹⁶⁷ The Office on Missing Persons, "Interim Report", August 2018, para. 47(l).

In December 2020, Judge Abeyrathna, a former Chair of the Presidential Commission on Political Victimization, a Commission that was seen as undermining criminal accountability, was appointed as OMP Chairperson. In May 2021, the same Government appointed Jayantha Wickremarathne as an OMP Commissioner. In his previous position as Inspector-General of Police, Mr. Wickremarathne oversaw the very police branches that have been allegedly involved in disappearances and subsequent intimidation of victim families. In December 2021, Mahesh Katulanda was appointed as OMP Chairperson. Mr. Katulanda appeared to prejudice thousands of cases awaiting investigation by his agency in stating to a journalist that there was no evidence that the many thousands of Tamils who had surrendered to the Sri Lankan military in 2009 had gone missing, and that it was the LTTE or opposition factions that had abducted a majority of the disappeared people.¹⁶⁸

- 85.** CSOs who were consulted stressed the need for independent Commissioners, and for the OMP to be delinked from the Ministry of Justice, Prison Affairs and Constitutional Reforms. CSOs varied in their willingness to engage with the currently constituted OMP. Some supported engagement so that there could be a more exact figure of disappearances that had occurred. The international community has invested in providing technical assistance, and there are particular areas which would further benefit from such assistance (particularly in relation to forensic capacities). Ideally, such assistance should be directed to supporting a re-orientation of the OMP towards clarifying the fate and whereabouts of disappeared persons, strengthening the institution's independence and ensuring a safe environment for victims to engage.

B. Legal Proceedings within Sri Lanka

I. Criminal Proceedings

- 86.** Sri Lanka's record of establishing Cols has not been matched by advances in criminal accountability. Despite Cols identifying individuals as allegedly responsible or complicit in disappearances, there has been a consistent lack of implementation of their recommendations for further criminal justice investigations and prosecutions. Impunity has prevailed. Few prosecutions have been initiated, let alone completed. During some previous periods, officials were given immunity or indemnities under legislation.¹⁶⁹ The rate of prosecution and conviction has been low. In its second periodic report to the Committee against Torture in 2004, for instance, Sri Lanka reported that 432 disappearance cases had been filed in either the High Court or Magistrates Court, with 178 cases concluded.¹⁷⁰ Of these, only 12 convictions were recorded, in contrast to 130 cases in which the accused was "discharged". Whilst Sri Lankan authorities have not provided equivalent statistics on this matter to the United Nations since that time, information gathered by OHCHR suggests limited progress with prosecutions, indicating a deeply ingrained unwillingness on the part of the Sri Lankan State to genuinely pursue criminal accountability. The dismal record of accountability in Sri Lanka, led the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to conclude after his country visit in 2017, that "the criminal justice system in Sri Lanka is inadequate and flawed".¹⁷¹ The following section highlights some of the key factors which appear to be impeding further progress.

Gaps in the Domestic Legal Framework

- 87.** Whilst Sri Lanka criminalized the act of "enforced disappearance" in 2018,¹⁷² there remain shortcomings in the governing legal framework. It remains unclear whether this Act applies

¹⁶⁸ Jeevan Ravindran, "Families in Sri Lanka Yearn for Answers on Relatives who Disappeared in Civil War", *Reuters*, 2 November 2022.

¹⁶⁹ See: Sri Lanka, Indemnity Act, No. 20 of 1982.; Sri Lanka, Indemnity (Amendment) Act, No. 60 of 1988.

¹⁷⁰ Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Second Periodic Reports of States Parties Due in 1999, Addendum, Sri Lanka, CAT/C/48/Add.2, 6 August 2004*, paras 62-64.

¹⁷¹ A/HRC/45/45/Add.1, para. 44.

¹⁷² Sri Lanka, International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018.

to cases of disappearances that occurred in earlier years.¹⁷³ Under international human rights law, the prohibition on the retroactive application of criminal law does not apply to acts or omissions which constituted crimes under international law at that time or were “criminal according to the general principles of law recognised by the community of nations” at the time it was committed.¹⁷⁴ International law has long recognized conduct involving enforced disappearances as criminal. The WGEID has also clarified that one of the consequences of the “continuous” nature of enforced disappearances is that it is possible to convict someone for enforced disappearance on the basis of a legal instrument enacted after the disappearance began without contravening the principle of non-retroactivity.¹⁷⁵ The Sri Lankan legal framework also does not recognise enforced disappearances as potentially amounting to a crime against humanity, nor does it cover all internationally recognised modes of liability, such as command responsibility.

Police Unwillingness to Accept and Investigate Complaints of Enforced Disappearance

- 88.** Victims of enforced disappearance have had significant difficulties in even registering their complaints of enforced disappearance with the police. Many have faced procedural obstacles, intimidation, and harassment. One woman told OHCHR for instance:

“They (the police) said they could not file the case because I do not live in the area. So I went to file a case at the police station close to my house. They refused to file the complaint as they told me that my husband did not disappear in this area...They told me I had to lodge a complaint where my husband disappeared. They did this back and forth refusing to take my complaint for three days. After three days, in the end, the police station where my husband was taken away agreed to take the case. They told me: are you trying to file a case against the government? Against us? Maybe it is LTTE who took him away...I was handed over the complaint in Sinhala and could not read it. When I was able to have it translated, I realised that it did not mention my name. It was just mentioning that he had been taken away by an unknown person.”

- 89.** In some instances, the victim was either deliberately blamed or it was implied that the disappeared person must have done something wrong to deserve their fate, as was the case for one victim whose husband disappeared after being detained by members of the Karuna Group/TMVP. She explained how the police, with TMVP members embedded within the station, asked her what her husband did wrong, instead of receiving and registering her complaint. Another woman who witnessed the arrest of her husband by the Special Task Force in February 2009 explained how she could not find additional witnesses because, as she later learned, the Special Task Force had threatened and forced them to move.
- 90.** Victims have little confidence that police are diligently investigating their cases, a conclusion which seems to be confirmed by the low number of cases that are referred for criminal prosecution. The credibility of the police to effectively investigate enforced disappearances has been questioned, given the alleged involvement of police and other security forces in such cases. Appointments such as that of the current Inspector-General of Police, Deshabandu Tennakoon, who the Supreme Court in December 2023 found personally responsible for torture as well as responsible for acts of torture committed by his subordinates¹⁷⁶, further erode faith in the police as an institution.¹⁷⁷

¹⁷³ United Nations, Human Rights Council, *Follow-up on the Visits of the Working Group on Enforced or Involuntary Disappearances to Peru and Sri Lanka: Report of the Working Group on Enforced or Involuntary Disappearances*, A/HRC/42/40/Add.1, 10 September 2019, pp. 28-29. See Government of Sri Lanka comment on this issue: CED/C/LKA/1, para. 69. This segment of the Sri Lankan report does not clarify the temporal application of Sri Lanka’s provision criminalizing enforced disappearance, but merely quotes the relevant international law standards concerning retroactivity.

¹⁷⁴ ICCPR, art. 15(1) and (2).

¹⁷⁵ A/HRC/51/31/Add.3, para. 31; Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearances as a Continuous Crime*, para. 5, available in A/HRC/16/48, p. 12.

¹⁷⁶ Supreme Court of Sri Lanka, *Sumangala vs. Bandara & others*, SC (FR) Application No. 107/2011, 14 December 2023, p.4-12..

¹⁷⁷ See for example: Ruki Fernando, “Why Deshabandu Tennakoon Must not Continue as Acting Police Chief”, *Groundviews*, 22 December 2023.

91. Several CSO interlocutors considered that establishing a specialist investigation unit dedicated to enforced disappearances would potentially help expedite investigations into the thousands of outstanding cases,¹⁷⁸ adding the caveat that any specialist unit would have to be free from interference from implicated areas of law enforcement and the military. Interlocutors also referred to the need to improve tools and access to specialists to undertake necessary investigations, particularly in relation to the investigation of mass graves, including access to credible forensic analysis.

Conflicts of Interest of the Attorney-General's Office

92. There is no independent national prosecution service in Sri Lanka, despite recommendations of previous COIs and a UN Special Rapporteur,¹⁷⁹ and the International Monetary Fund recently describing it as a “preferable” alternative.¹⁸⁰ Currently, prosecutorial powers are vested in the Attorney-General, who acts also as the Government’s chief legal advisor and defender. The Attorney-General represents respondents from the army, police or other State institutions cited in a habeas corpus writ. However, if these cases are later the subject of a prosecution, the same Attorney-General would then be expected to lead the prosecution against those s/he previously represented. The Attorney-General has the sole discretionary power to decide whether to indict individuals, a power unchecked by transparent and objective prosecution guidelines. The Attorney-General also has the power to discontinue proceedings on policy grounds without permission of the Court or provision of reasons (*nolle prosequi*).¹⁸¹ For many, it is difficult to avoid the conclusion that the low number of prosecutions and the decisions taken around discontinuance of proceedings, especially against higher-level officers, reflects an abuse of this wide and unfettered prosecutorial discretion for political reasons. The establishment of an independent prosecutorial office would be an important step towards addressing such potential conflicts of interest.

Lack of Protection of the Independence of the Judiciary

93. Concerns continue to be raised about structural weaknesses undermining the independence of the judiciary.¹⁸² Political pressures undermine the judiciary’s ability to adjudicate highly politicized conflict-related cases. Some judges who have been willing to assert their independence against the political establishment or military have faced significant intimidation. For instance, in September 2023, Judge T Saravananaraja, an ethnic Tamil judge at the Mullaitivu District Court, Northern Province, resigned and fled the country. This judge had ordered excavations at a mass grave site in Kokkuthodivai and also issued an order to reverse the construction of a Buddhist shrine on top of a Hindu temple site.¹⁸³ In his resignation letter, he stated that the precipitating factors were threats to his life.¹⁸⁴ Many expert observers and lawyers with whom OHCHR consulted, continue to identify international assistance as vital to increase the perceived impartiality and independence of the justice system.

Lack of Protection for Victims and Witnesses

94. Lawyers reported to OHCHR that currently there is an inadequate system of protection for victims. Lawyers also reported that they themselves are subject to intimidation and reprisals. Frequently the threat comes from within the security forces or law enforcement (including those that have responsibility for conducting investigations). The protection that can be

¹⁷⁸ It is understood that in 1997, a Disappearances Investigation Unit was established that subsequently referred cases to the Attorney-General, but it is understood that this unit may no longer operate. See A/HRC/30/CRP.2, para. 136.

¹⁷⁹ A/HRC/45/45/Add.1, paras. 50 and 91 (c).

¹⁸⁰ International Monetary Fund, “Sri Lanka: Technical Assistance Report-Governance Diagnostic Assessment”, IMF Country Report No. 23/340, (International Monetary Fund, Washington D.C., 30 September 2023), p. 138.

¹⁸¹ International Monetary Fund, “Sri Lanka: Technical Assistance Report-Governance Diagnostic Assessment”, pp. 131-132.

¹⁸² For an earlier assessment, see United Nations, Human Rights Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers on her Mission to Sri Lanka*, A/HRC/35/31/Add.1, 23 March 2017.

¹⁸³ Human Rights Watch, “World Report 2024: Events of 2023”, 12 January 2024, p. 587.

¹⁸⁴ Resignation Letter of Judge Saravananaraja to the Judicial Services Commission, 23 September 2023.

extended under the Assistance to and Protection of Victims of Crime and Witnesses Act¹⁸⁵ is regarded as ineffective. Legal representatives with whom OHCHR engaged saw the protection agency administering this Act as focused on issues such as domestic violence-related crimes or “general crimes”, rather than conflict-related crimes. One CSO organisation stated to OHCHR: “Protection should be improved and made devoid of political, bureaucratic, governmental and other influences”. In April 2023, the Human Rights Committee expressed concern that “victims, their relatives and witnesses are not provided effective protection and continue to face threats, intimidation and harassment”.¹⁸⁶ There is no real access to justice for such acts of reprisals, with women facing additional barriers to justice.¹⁸⁷ In this environment, many victims and witnesses remain unwilling to testify. Bolstering legal rights of victims and prioritising protection strategies, in conjunction with relevant NGOs, remain key necessary actions.

Pronounced Delays in Criminal Proceedings

- 95.** Criminal proceedings in Sri Lanka are generally beset by prolonged delays. However, in cases involving enforced disappearances or other serious violations involving State officials, the delays are even more pronounced. In most of the emblematic cases that OHCHR has been monitoring, many years pass between charges being laid against individuals, and the commencement of a trial. Indeed, in none of the emblematic cases monitored by OHCHR, has there yet been a completed trial. In some cases, the delay relates to motions and appeals lodged by the defendants. In others, the reasons for the delays are not so evident, leading to the conclusion of victims’ lawyers that delays are a strategy to avoid accountability.

Use of Pardons in Violation of Human Rights Obligations

- 96.** Notwithstanding the rarity of individuals being convicted and sentenced for enforced disappearance-related cases, it is of concern that in at least one case, there has been the issuance of a Presidential pardon. In June 2015, after 13 years of legal proceedings, the Colombo High Court found Army Staff Sergeant Sunil Ratnayake guilty in connection with the murder of eight civilians, including a five-year old child, after their disappearance in Mirusuvil, Jaffna in 2000. However, in March 2020, the then President of Sri Lanka granted a Presidential pardon to Staff Sergeant Ratnayake who was then released from jail, in what the OHCHR’s spokesperson noted was an affront to victims and a failure of Sri Lanka to fulfil its international human rights obligations.¹⁸⁸

Politicized use of Presidential Col

- 97.** In 2020, the then President of Sri Lanka established a Commission of Inquiry to Investigate Allegations of Political Victimization During the Period Commencing 8 January 2015 and Ending 16 November 2019. Of particular concern were this Commission’s recommendations that specific investigations and prosecutions be halted and convictions overturned in cases involving gross human rights violations - including in the illustrative cases of enforced disappearances detailed below.¹⁸⁹ While there has been no formal implementation of this Commission’s recommendations, it is noticeable that in several of the cases involving high-profile accused, charges have been withdrawn by the Attorney-General.

¹⁸⁵ Sri Lanka, Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023.

¹⁸⁶ CCPR/C/LKA/CO/6, para. 12.

¹⁸⁷ CEDAW/C/LKA/CO/8, para 14.

¹⁸⁸ United Nations, Office of the United Nations High Commissioner of Human Rights, “Press Briefing Note on Sri Lanka”, 27 March 2020.

¹⁸⁹ United Nations, Special Procedures of the Human Rights Council, “Sri Lanka: Experts Dismayed by Regressive Steps, Call for Renewed UN Scrutiny and Efforts to Ensure Accountability”, 5 February 2021.

II. Illustrative Cases

98. Two cases of disappearances illustrate starkly the lack of progress with even emblematic cases of enforced disappearance, and the nature of political pressures brought to bear during the process of criminal investigation and prosecution.

99. Trincomalee 11 case: In 2008 and 2009, eleven males, most of whom were Tamil youth from Trincomalee, were reportedly subjected to enforced disappearance by members of the Sri Lankan Navy and kept in an unrecognized detention facility.¹⁹⁰ On 10 June 2009, one suspect, Lieutenant Commander Sampath Munasinghe was arrested.¹⁹¹ He is understood to have been subsequently released on bail.¹⁹² No tangible progress was made, and the investigation team of the police's CID was not allowed to enter the Navy base for six years.¹⁹³ In 2015, the CID initiated a fresh investigation into the case and identified more suspects, which reportedly led to additional indictments of Navy personnel including several high-ranking officers such as Lieutenant Commander Chandana Prasad Hettiarachchi, alias "Navy Sampath" and the then Chief of Defence Staff Admiral Ravindra Wijegunaratne. Wijegunaratne was accused of shielding one of the main suspects and was arrested before being released on bail.¹⁹⁴ Subsequently, 14 persons were indicted, including the former Navy Commander of the Sri Lanka Navy, Admiral Wasantha Karannagoda.¹⁹⁵ In January 2020, the Presidential Commission on Political Victimization reportedly issued directives to the Attorney General to halt the prosecution of Admiral Karannagoda and former Navy Spokesman Commodore D.K.P. Dassanayake and recommended that they, as well as others accused in the case, should be acquitted of all charges in the Fort Magistrate's Court. The Commission also recommended that the indictment in the Permanent High Court Trial at Bar in Colombo be withdrawn.¹⁹⁶ The Attorney-General denied any power of the Commission to issue any binding directive to him.¹⁹⁷ Subsequently, however, Senior Counsel from the Attorney-General's Department reportedly informed the Court of Appeal of a decision not to proceed with charges against former Navy Commander Karannagoda.¹⁹⁸ According to information presented to OHCHR by Sri Lanka, the judicial proceedings have temporarily stopped until the final determination on a writ petition challenging the prosecutions is made by the Court of Appeal.¹⁹⁹ During the course of the proceedings, the police investigator was intimidated and witnesses and lawyers were threatened.²⁰⁰

100. In spite of his possible involvement in this case, the then President appointed Admiral Karannagoda as the Governor of the North-Western province in December 2021.²⁰¹ Similarly, Admiral Ravindra Wijegunaratne has recently been appointed as the High Commissioner of Sri Lanka to the Islamic Republic of Pakistan.²⁰²

¹⁹⁰ See: United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/20, 9 February 2021, para. 50.

¹⁹¹ "CID on Collision Course with CDS over the Fugitive", *Daily Mirror*, 19 June 2018.

¹⁹² C. A. Chandraprema, "SL Navy and the Disappearance of 11 Persons: Principal Witness Turns against CID Part II", *Lankaweb*, 27 June 2019.

¹⁹³ A/HRC/33/51/Add.2, para. 49.

¹⁹⁴ "CDS Released on Bail", *Daily News*, 6 December 2018.

¹⁹⁵ Government of Sri Lanka, "Responses to the Questions Raised by the OHCHR in Preparation for its Forthcoming Written Update on Sri Lanka to the HRC in September 2023", pp. 3-4.

¹⁹⁶ Centre for Policy Alternatives, "A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization", p. 21. See also United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/20, 9 February 2021, para. 27.

¹⁹⁷ See Lakmal Sooriyagoda, "PCOI has No Power to Order AG to Refrain from Performing Statutory Functions: AG", *Daily News*, 29 January 2020.

¹⁹⁸ See: Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Sri Lanka*, 26 April 2023, CCPR/C/LKA/CO/6, para. 11. See also: Dilshan Tharaka, "Charges against Admiral Karannagoda Dropped", *Daily News*, 14 October 2021.

¹⁹⁹ Government of Sri Lanka, "Responses to the Questions Raised by the OHCHR in Preparation for its Forthcoming Written Update on Sri Lanka to the HRC in September 2023", pp.3-4.

²⁰⁰ United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/20, 9 February 2021, para. 50.

²⁰¹ President of Sri Lanka, "New Governor of the North Western Province Sworn in Before President", news release, undated.

²⁰² Parliament of Sri Lanka, "Committee on High Posts Approves the Appointments of Two High Commissioners and an Ambassador", news release, 20 October 2023; Sri Lankan Ministry of Foreign Affairs, "High Commissioner-designate Admiral Ravindra Chandrasiri Wijegunaratna (Rtd.) Presents Credentials to the President of Pakistan", news release, 21 December 2023.

101. Disappearance of Prageeth Ekneligoda: Political cartoonist and journalist Prageeth Ekneligoda, an outspoken critic of the Government, was reportedly arbitrarily detained and released by military intelligence officers in 2009 and subsequently subjected to enforced disappearance in January 2010.²⁰³ On 19 February 2010, a habeas corpus application was lodged in the Court of Appeal.²⁰⁴ It was not until 2015 that the criminal investigations showed substantive progress. In September and October 2015, several suspects, including military personnel and two former LTTE cadres were taken into custody.²⁰⁵ According to the Sri Lankan authorities, in relation to the alleged arbitrary detention of Mr. Ekneligoda in 2009, 12 military officers were arrested, and indictments issued against seven of them in proceedings before the Homagama High Court on various kidnapping-related charges.²⁰⁶ In relation to the alleged enforced disappearance in 2010, nine suspects were arrested and indicted in proceedings before the Permanent High Court in Colombo on charges of kidnapping and conspiracy to murder.²⁰⁷ People who were advocating for justice in this case have been reportedly threatened, intimidated and harassed.²⁰⁸ The Presidential Commission on Political Victimization in 2022 recommended that the suspects in the Homagama High Court be acquitted of all charges; and that indictments filed in the Permanent High Court be withdrawn.²⁰⁹ Both proceedings reportedly remain ongoing, with no trials completed.

III. Government Earlier Proposal for a Specialized Judicial Mechanism

102. In 2015, the then newly-elected Government appeared ready to take steps to address impunity. In Human Rights Council (HRC) resolution 30/1, which Sri Lanka co-sponsored, the HRC noted with appreciation the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; affirmed that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirmed the importance of participation of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators. This, however, never materialized. In February 2020, following a change of Government, Sri Lanka formally withdrew its support of the HRC resolution,²¹⁰ and in subsequent years successive Governments have maintained that establishing such a mechanism with foreign judges and prosecutors would be unconstitutional,²¹¹ though that view has been sharply contested by some practitioners, academic experts and civil society organisations.²¹² No real alternative plan has been advanced by Sri Lanka as to how authorities intend to address impunity.

²⁰³ See: A/HRC/30/CRP.2, paras 409, 410, 453 and 456.

²⁰⁴ See for example: Sandya Ekneligoda, "Tribute to Victims of Enforced Disappearance - Ms. Sandya Ekneligoda's Testimony", Opening Statement to the 23rd Session of the Committee on Enforced Disappearance, 12 September 2022.

²⁰⁵ See: A/HRC/30/CRP.2, para. 456.

²⁰⁶ See: Government of Sri Lanka, "Responses to the Questions Raised by the OHCHR in Preparation for its Forthcoming Written Update on Sri Lanka to the HRC in September 2023". See also: United Nations Human Rights Committee, *Replies of Sri Lanka to the List of Issues in Relation to its Sixth Periodic Report*, 11 May 2022, CCPR/C/LKA/RG/6, para. 125; Full list of charges listed in: "Prageeth Ekneligoda Case: Nine Army Officials Indicted", *Daily Mirror*, 27 November 2019.

²⁰⁷ See: Government of Sri Lanka, "Responses to the Questions Raised by the OHCHR in Preparation for its Forthcoming Written Update on Sri Lanka to the HRC in September 2023", p. 3; Working Group on Enforced or Involuntary Disappearances and others, AL LKA 5/2021, 17 November 2021.

²⁰⁸ Human Rights Watch, "Open Wounds and Mounting Dangers – Blocking Accountability for Grave Abuses in Sri Lanka", 1 February 2021.

²⁰⁹ See: Centre for Policy Alternatives, "A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization", p. 69-71. See also: United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/46/20, 9 February 2021, para. 27.

²¹⁰ Ministry of Foreign Affairs, "43rd Session of the Human Rights Council – High Level Segment Statement by Hon. Dinesh Gunawardena, Minister of Foreign Relations of Sri Lanka 26 February 2020", statement, 26 February 2020.

²¹¹ *Ibid.*

²¹² See, for example, "A Question of Political Will: Unpacking de Silva's Comments on Foreign Judges", *Groundsview*, 1 April 2017; Bhavani Fonseka and Luwie Ganeshathasan, "The Case for Foreign Judges in a Judicial Mechanism in Sri Lanka: Countering Falsehoods", *Groundsview*, 28 March 2019.

IV. Civil Cases

- 103.** In an attempt to determine the whereabouts of their loved ones, some victims' families have instituted habeas corpus actions before the courts. These cases have, however, been beset with significant procedural delays. Rather than being adjudicated promptly, cases have taken some 10 years from filing to judgment. Lawyers interviewed for this report detailed instances of the misuse of powers to postpone hearings and thereby delay cases. In several proceedings, the Attorney-General successfully applied to transfer the cases to a court away from the site of the enforced disappearance: e.g., to the capital or another location remote to the petitioners. Such transfers have made it even more challenging for victims with little means and their lawyers to pursue cases. Consequently, a number of habeas corpus cases have been dismissed due to the non-appearance of the petitioner at the new location. One example is the disappearance of 24 Tamil youth, including one young woman, allegedly at the hands of the Sri Lankan Army at Navatkuli, Jaffna District on 19 July 1996. Some seven of the habeas corpus cases were transferred from Jaffna to the Anuradhapura High Court (in a predominantly Sinhalese area) in 2008 and 2009.²¹³ In late 2010, the families and attorney did not attend one of the hearings, resulting in the dismissal of the cases on procedural grounds.
- 104.** Some recent habeas corpus cases have resulted in court judgments concluding that security forces were responsible for taking persons into custody. In December 2022, the Vavuniya High Court ordered the Sri Lankan Army to produce a person who was handed over to armed forces in Mullaitivu in May 2009. In February 2023, the Vavuniya High Court ordered the Army to produce three more persons who had surrendered to the Sri Lankan Army after the defeat of the LTTE in May 2009. The Army has yet to present the individuals as ordered by the courts or provide an explanation of their whereabouts. In February 2024, the Vavuniya High Court ordered the Sri Lankan Army to produce a person who was disappeared at a checkpoint in 2006 by June 2024. The first two cases were filed in 2013, the latter one in 2006. Repeated procedural delays meant that the court proceedings only concluded 9 to 18 years later. Alongside these habeas corpus cases, some legal representatives have sought to make use of "Right to Information" proceedings to elicit further information from the military, including lists of those who surrendered and were taken into custody of the security forces in May 2009. However, despite court orders, the security forces have provided only the list of persons held in rehabilitation centres after the conflict.
- 105.** Intimidation tactics have also been evident in relation to habeas corpus proceedings. Lawyers interviewed for this report accounted instances of army and police showing a deliberate presence around court proceedings, and taking photographs of witnesses and lawyers. Several lawyers also reported receiving threatening phone calls from persons identifying themselves as from the police before and after proceedings, though were not able to verify the identity of callers.

C. Reparations

- 106.** Whilst Sri Lanka has established the infrastructure for the delivery of at least some forms of reparations, they remain the subject of controversy, given a failure to engage sufficiently with victims and communities and to ensure a comprehensive approach to accountability.
- 107.** In 2018, Sri Lanka established the Office for Reparations under the Office for Reparations Act 2018.²¹⁴ The Act, complemented by the Reparation Policy and Guideline of 2021,²¹⁵ provides for the granting of reparations to persons who have suffered personal injury, death or damage to property arising from the armed conflict that took place in the Northern and

²¹³ Centre for Human Rights and Development, "Enforced Disappearance in Sri Lanka - Lessons from CHRD's Advocacy", 2015, p.35.

²¹⁴ Sri Lanka, Office for Reparations Act, No. 34 of 2018, section 3. Before 2018, the provision of relief to person was governed by the Rehabilitation of Persons, Properties and Industries Authority Act No. 19 of 1987 ("REPPIA") which provided only for the grant of monetary compensation on an ad hoc basis to persons, dependent upon decision-making by the Cabinet.

²¹⁵ Office for Reparations - Sri Lanka, "Reparations Policies and Guidelines 2021", 2021.

Eastern Provinces or its aftermath, or due to political unrest or civil disturbances or due to the enforced disappearances. Both the OMP Act 2016 and the Reparation Policy and Guideline 2021 include under the term “reparation”, “compensation and / or (..) of other administrative and welfare services including psycho-social services” and “the reparations, psycho-social support and other means to improve social and economic conditions of victims and relatives of missing persons”. The Reparation Policy and Guideline envisage the provision of livelihood support and psychosocial support described as a form of rehabilitation, compensation and financial support, restitution of land rights, and provision of housing or administrative relief. The Reparation Policy expressly disavows that the State’s duty to grant reparations is based on any acknowledgement of responsibility for wrongdoing, but instead bases it singularly on “the State’s duty to protect its citizens”.²¹⁶ In practice the OMP appears to be playing the key role in determining eligibility of persons, with the Office for Reparations acting more as the distributor of funds.

- 108.** Following a recommendation included in the OMP 2018 Interim Report,²¹⁷ a financial aid programme was adopted to provide a small monthly living allowance of Rs. 6,000 to the family (surviving spouse, child/children and/or surviving parent/s) of a missing/disappeared person, who have no permanent income and may be affected by other vulnerabilities. These payments, from their size and preconditions, however, appear to be more in the nature of “interim relief” than compensation.
- 109.** Sri Lanka has reported that in 2021 and 2022, a budget of LKR 459 million (approximately USD 2.5 million) and LKR 815 million (approximately USD 4 million) respectively was allocated to the Office for Reparations. In 2022, LKR 405.3 million (approximately USD 2 million) was said to have been disbursed altogether “for 2402 cases related to death and injuries, missing persons and damaged properties due to conflict in the Northern and Eastern Provinces and few other areas”.²¹⁸ Whilst no further disaggregation of cases was provided in relation to this amount, Sri Lanka has also reported, that as of 12 July 2023, 203 families of “missing persons from North and East conflict” had received monetary compensation amounting to LKR 40,600,000 (approximately USD 127,500).²¹⁹ This disbursement was said to follow the review of eligibility of victims claims by the legal panels set up by the OMP and the issuance of a certificate of absence or certificate of death.
- 110.** As noted in Chapter 4, many victims have ambivalent feelings about receiving monetary compensation as reparations. Many consider the compensation a tool for diverting attention from justice and an attempt to “buy people’s silence”, a substitute for real acknowledgment of the disappearance of their loved one or holding the perpetrators accountable. For most, to be meaningful, reparations need to be accompanied by an acknowledgement of responsibility.²²⁰ CSOs consulted also considered there was a need for reform of the Office for Reparations: in particular for the Office to be more transparent in its work, that their processes be made more accessible for victims, and for the processing of claims to be more expeditious.
- 111.** While the OMP reports having engaged in consultations in development of its Reparation Policy, many victim communities have not been aware of and/or have not been able to engage in such discussions. There does not appear to have been specific gender-responsive planning, despite the dominance of female-headed households amongst families of the disappeared. It is apparent, that the focus of the OMP and Office for Reparations remains on potential financial compensation, livelihood support and potentially (though not yet

²¹⁶ Office for Reparations - Sri Lanka, “Reparations Policies and Guidelines 2021”, 2021, p. 3.

²¹⁷ The Office on Missing Persons, “Interim Report”, para. 45(a).

²¹⁸ Sri Lanka, “Observations of the Government of Sri Lanka to the Advanced Unedited Version of the Written Update”, (2023), p. 9.

²¹⁹ Sri Lanka, “Observations of the Government of Sri Lanka to the Advanced Unedited Version of the Written Update”, (2023), p. 9. A slightly higher figure of LKR 41.2 million (approximately USD 139,000) was mentioned in the Statement by Her Excellency Himalee Arunatilaka, Ambassador and Permanent Representative of Sri Lanka to the United Nations at the 55th Session of the United Nations Human Rights Council”, statement, 1 March 2024.

²²⁰ United Nations, Human Rights Council, *Visit to Sri Lanka - Report of the United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, A/HRC/45/45/Add.1, 18 June 2020, paras. 55 and 92(e).

realised on a significant scale) psycho-social support. Realizing non-financial aspects of reparations: including acknowledgment, memorialisation, and legal support, does not feature prominently. CSOs identified other programmes of potential interest being assistance with the education of children, and employment opportunities as well as expediting criminal trials. Both international standards and feedback from victim communities emphasise the need for further inclusive and gender-responsive consultations and a fuller conceptualization of reparations.²²¹

D. Non-recurrence of Violations

112. Associated with providing reparations is taking effective steps to prevent the recurrence of violations. Numerous inquiries and reports have pointed the way in this respect: e.g. from vetting of the security forces, tightening civilian control of the military, repealing draconian emergency regulations and the Prevention of Terrorism Act and reinstating and ensuring adherence to legal safeguards around detention and access to courts. Most of these recommendations have not been implemented. In its recent report to the CED, Sri Lanka noted steps taken by the leadership within the security forces to issue instructions or directives about compliance with relevant standards.²²² However, the report does not detail deeper reforms. In the absence of serious systemic reform, there remains a real risk of ongoing enforced disappearances.

113. While such reforms are undoubtedly a part of the process that is required to ensure non-recurrence, additional measures are just as important at the social, cultural and personal level. These include strengthening civic space, education programmes, anti-discrimination initiatives, memorialization, open archives and adequate psychosocial support.²²³

VII. International Contributions to Accountability

114. Given the accountability gap at the domestic level, it is vital that the international community remain engaged and actively contribute to furthering accountability in Sri Lanka.²²⁴

A. Cases under Universal Jurisdiction

"We need people to believe that they can also win a case. We need results. We need to show some wins. We need to break the silence in the country, in the public. Even one case would be enough. Otherwise, we just campaign, protest, and fail".

115. With these words, one victim expressed the desire for a successful prosecution in a third State, seeing that this would in turn assist to chip away at the prevailing impunity. States parties to the ICPPED have obligations to take into custody any suspects of enforced disappearances who are found on their territory or take such other legal measure as necessary to ensure his/her presence; and they must either prosecute them or extradite them.²²⁵ The UN Declaration on Enforced Disappearances, states that all States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.²²⁶ Under recognized principles of universal jurisdiction, States are entitled to exercise jurisdiction over suspects of international crimes found on their

²²¹ See *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, A/RES/60/147.

²²² CED/C/LKA/1, paras. 134, 144-149.

²²³ United Nations, "Guidance Note of the Secretary-General: Transitional Justice - A Strategic Tool for People, Prevention and Peace", 11 October 2023, pp. 20-21.

²²⁴ In this section OHCHR is not making findings of individual responsibility but is reporting accountability proceedings.

²²⁵ International Convention for the Protection of All Persons from Enforced Disappearance, arts. 9-11.

²²⁶ *Declaration on the Protection of All Persons from Enforced Disappearance*, art. 14.

territory regardless of the degree of other connections the case may have with that state.²²⁷ Given widespread impunity in Sri Lanka, it is vital for third States to exercise their powers using all available forms of jurisdiction, including under accepted principles of universal and extra-territorial jurisdiction, consistent with international law.

- 116.** No State has yet issued an arrest warrant or prosecuted any Sri Lankan actor suspected of involvement in an enforced disappearance. There have been some attempts, particularly by NGOs, to stimulate such action. A key stumbling block has been the immunities afforded to persons who remain in high office or have subsequently been appointed to diplomatic posts.
- 117.** On 28 August 2017, an NGO filed criminal complaints in Brazil and in Colombia against Major-General Jagath Jayasuriya, by then Sri Lanka's Ambassador to Brazil and Colombia. Major-General Jayasuriya previously headed the Security Force Headquarters in Vanni during the final phase of the conflict between Sri Lanka and the LTTE. He was in command of several army divisions allegedly involved in enforced disappearances and other serious crimes.²²⁸ On 29 August 2017, Major-General Jayasuriya travelled back to Sri Lanka.²²⁹ In May and June 2019, he reportedly visited Australia. NGOs advised the Australian Federal Police (AFP) about his presence and followed up with a formal request to investigate. After multiple follow-up requests, the AFP stated in September 2021, that due to an administrative oversight the matter had not been allocated to an investigations team.²³⁰ On 31 January 2022, the AFP stated that they would not be conducting an investigation of Major-General Jayasuriya for several reasons. One reason put forward was that unilateral investigation or prosecution in Australia would be counter to previous public statements by the Australian Government endorsing a Sri Lankan-determined enquiry process. The letter pointed in particular to a Sri Lankan Commission of Inquiry established in January 2021 – seemingly a reference to the Commission undertaking follow-up analysis of other COIs chaired by Judge Nawaz – as being the most appropriate mechanism in the first instance. Other reasons posited by the AFP were that it was aware of “current legal action before the ICC”,²³¹ and because Mr. Jayasuriya was not present in Australia.²³²
- 118.** In July 2011, an NGO filed a brief with the AFP accusing Admiral Thisara Samarasinghe of war crimes and making a request for an investigation.²³³ Admiral Samarasinghe had been commander of the Sri Lankan Navy from July 2009 to 1 January 2011, a period during which the Navy allegedly engaged in serious violations, including enforced disappearances.²³⁴ According to a communication from the Australian Government to OHCHR, the AFP in July 2012 declined a referral by an NGO of alleged war crimes by Admiral Samarasinghe. Admiral Samarasinghe served as Sri Lanka's High Commissioner to Australia from July 2011 until 2015.
- 119.** In 2011, NGOs filed complaints in Germany and Switzerland against Major-General Jagath Dias who served as the commander of the 57th Division during the final phases of the armed conflict.²³⁵ By 2011, he was serving as Sri Lanka's deputy ambassador to Germany and Switzerland. Soon thereafter, Major-General Dias completed his ambassadorial term and

²²⁷ Sri Lanka itself has acknowledged the validity and value of the principle of universal jurisdiction, while calling for clearer and sounder principles to guide its exercise: see Permanent Mission of Sri Lanka to the United Nations, “77th Session of the United Nations General Assembly Sixth Committee: The Scope and Application of the Principle of Universal Jurisdiction. Statement by Mr. Sugeeshwara Gunaratna, Deputy Permanent Representative of Sri Lanka”, statement, 12 October 2022.

²²⁸ A/HRC/30/CRP.2, para. 115.

²²⁹ Peter Prengaman, “Sri Lankan Ambassador, Accused of War Crimes, Leaves Brazil”, *Associated Press*, 29 August 2017.; Sri Lanka, Ministry of Foreign Affairs, “The Ministry of External Relations of Brazil Bids Farewell to Sri Lankan Ambassador Jagath Jayasuriya”, 28 August 2017.

²³⁰ Australian Centre for International Justice, “The Duty to Investigate Crimes of Torture in National Law and Practice: Submission to the Special Rapporteur on Torture”, 25 November 2022, p. 7.

²³¹ At this point, however, there are only filings that have been made by NGOs to the ICC under Article 15 of the Rome Statute: Global Rights Compliance, “Press Release”, 27 October 2021.

²³² Australian Centre for International Justice and International Transitional Justice Project, “Australia: A Safe Haven for War Criminals?”, 30 March 2022; Australian Federal Police, “Letter to the Australian Centre for International Justice and the International Transitional Justice Project”, 31 January 2022.

²³³ Ben Doherty, “Sri Lankan Envoy ‘War Crimes’”, *The Age*, 17 October 2011.

²³⁴ A/HRC/30/CRP.2, paras. 123 and 412.

²³⁵ *Ibid.*, para. 116.

reportedly returned to military service in Sri Lanka.²³⁶ In September 2011, the Swiss Federal Attorney-General decided not to open an investigation as Major-General Dias was no longer on Swiss territory, whilst noting that, were he to return to Switzerland, a criminal investigation could be opened.²³⁷

- 120.** In 2012, an NGO filed additional cases on behalf of German citizens and residents of Sri Lankan origin who suffered crimes during the final phase of the conflict, including in relation to enforced disappearances.²³⁸ Germany's Federal Prosecutor subsequently opened a structural investigation, seeking to secure evidence on the range of crimes committed in Sri Lanka.²³⁹
- 121.** In July 2022, after Gotabaya Rajapaksa ceased to be President, he left the country for Singapore, prompting an NGO to file a criminal complaint for war crimes, including war crimes linked to disappearances, with Singaporean authorities.²⁴⁰ Mr. Rajapaksa had been Sri Lanka's Secretary of Defence from 2005 to 2015, a period during which the security forces are alleged to have carried out hundreds of enforced disappearances.²⁴¹ Shortly after filing of the complaint, Mr. Rajapaksa left Singapore on 11 August 2022.²⁴²
- 122.** Through its liaison and requests received for assistance in judicial proceedings, OHCHR is aware of cases being investigated in third States, though such assistance is in general provided on the basis that the details of such investigations remain confidential during the investigation phase.

Civil Proceedings

- 123.** Civil tort proceedings were filed in a federal court of the United States of America by victim family members in 2019 against former President Gotabaya Rajapaksa in relation to acts allegedly committed by him when Secretary of Defence, specifically attacks on journalists, including the murder of Lasantha Wickrematunge and the enforced disappearance and torture of Keith Noyahr. In October 2019, a United States District Court dismissed the case, concluding that Mr. Rajapaksa enjoyed immunity with respect to acts performed in an official capacity as Secretary of Defence.²⁴³ In 2020, the federal Ninth Circuit Court of Appeals dismissed an appeal from this decision, concluding that the case was moot given Mr Rajapaksa had become President of Sri Lanka and enjoyed head-of-State immunity.²⁴⁴ The case was remanded to the District Court with instructions to dismiss the case without prejudice. Civil cases concerning allegations of other types of violations, including those against former President Mahinda Rajapaksa and General Shavendra Silva, have faced similar challenges.²⁴⁵

²³⁶ SwissInfo, *Sri Lanka Recalls Diplomat Accused of War Crimes*, 13 September 2011; 20 Minutes, *Colombo Rappelle Un Diplomate En Poste En Suisse*, 13 September 2011 (in French); Parliament of Switzerland, *Heure des Questions: Accréditation de Diplomates Etrangers Soupçonnés de Crime de Guerre, de Crime contre l'Humanité ou de Génocide*, 14 and 19 September 2011 (in French); Tages-Anzeiger, *Posse um Sri-Lankischen Diplomaten Hat Ein Ende*, 22 September 2011 (In German).

²³⁷ Trial International, "Jagath Dias will Face Investigations if he Returns to Switzerland, Federal Attorney General Confirms", 30 October 2011.

²³⁸ Andreas Schüller, "Universal Jurisdiction — the Most Difficult Path to Achieve Justice for Sri Lanka", *Just Security*, 24 February 2021.

²³⁹ Deutscher Bundestag, *Parliamentary Question and Answer - State Parliamentary Secretary Christian Lange*, Drucksache 19/24261, 10 November 2020, p. 74.

²⁴⁰ International Truth and Justice Project, "Press Release: Criminal Complaint Against Sri Lankan Ex President in Singapore", 24 July 2022.

²⁴¹ A/HRC/30/CRP.2, paras. 108 and 398.

²⁴² Singapore, Immigration and Checkpoints Authority, "Response to Media Queries Regarding Mr Gotabaya Rajapaksa", 11 August 2011.

²⁴³ United States District Court for the Central District of California, *Ahimsa Wickrematunge v. Nandasena Gotabaya Rajapaksa*, Case No. 2:19-cv-02577-R-RAO, Order, 17 October 2019.

²⁴⁴ United States Court of Appeals for the Ninth Circuit, *Ahimsa Wickrematunge v. Nandasena Gotabaya Rajapaksa*, Case No. 19-56312, Order, 27 February 2020.

²⁴⁵ United States Court of Appeal for the District of Columbia, *Manoharan v. Rajapaksa*, 711 F.3d 178, (D.C. Cir. 2013), Opinion, 29 March 2013;; United States District Court for the Southern District of New York, *Devi v. Silva*, 861 F. Supp. 2d 135, (S.D.N.Y. 2012), Memorandum Opinion and Order, 9 April 2012.

B. Targeted Sanctions

- 124.** OHCHR has repeatedly called for further targeted sanctions such as asset freezes and travel bans to be imposed, consistent with international law, against those credibly alleged to have perpetrated gross international human rights violations or serious international humanitarian law violations in Sri Lanka, as part of a wider range of accountability measures.²⁴⁶ A limited number of States have so far imposed such targeted sanctions.
- 125.** In February 2020, the United States designated General Shavendra Silva, by then Commander of the Sri Lanka Army and Acting Chief of Defence Staff and his immediate family members as ineligible for entry into the United States citing “credible information of his involvement, through command responsibility, in gross violations of human rights, namely extrajudicial killings, by the 58th Division of the Sri Lanka Army during the final phase of Sri Lanka’s Civil War in 2009”.²⁴⁷ In December 2021, it imposed the same type of travel sanctions on Sri Lankan naval intelligence officer Lieutenant Commander Chandana Prasad Hettiarachchi citing “his involvement in gross violations of human rights, namely, the flagrant denial of the right to liberty of at least eight “Trincomalee 11” victims, from 2008 to 2009”; and on former Sri Lanka Army Staff Sergeant Sunil Ratnayake for “his involvement in gross violations of human rights, namely the extrajudicial killings of at least eight Tamil villagers in December 2000”.²⁴⁸ In December 2022, the United States imposed travel sanctions on Prabath Bulathwatte citing his involvement, as “head of a clandestine Sri Lankan Army platoon, known as the “Tripoli Platoon” in the “torture and/or cruel, inhuman, or degrading treatment or punishment of Sri Lankan journalist, Keith Noyahr, in May 2008”.²⁴⁹ In April 2023, it imposed travel sanctions on Admiral (ret.) Wasantha Karannagoda, by then Governor of Northern Western Province in Sri Lanka (former Commander of the Navy), citing his involvement in gross violations of human rights during his tenure as a naval commander.²⁵⁰
- 126.** In January 2023, Canada imposed financial sanctions (asset freezes) on former Sri Lankan Presidents Mahinda Rajapaksa and Gotabaya Rajapaksa, as well as on Sunil Ratnayake and Chandana Prasad Hettiarachchi, on grounds of having committed gross and systematic violations of human rights during Sri Lanka’s armed conflict.²⁵¹
- 127.** Victims and CSOs consulted for this report expressed support for targeted sanctions against Sri Lankan nationals facing credible allegations of involvement in enforced disappearances to “show that the international community is watching them”. One victim elaborated: “If some perpetrators are now refused visa to the U.S. or Canada or see their assets frozen, they may get the sense that they are on a sanction list and that their behaviour must be condemned”.

C. Other Potential Restrictive Measures

- 128.** Amongst the other measures supported by civil society interlocutors with whom OHCHR engaged was the application of stringent vetting procedures to Sri Lankan police and military personnel identified for UN peacekeeping. In particular, it was felt that there was a need for a stricter application of the UN human rights screening procedures by the HRC-SL and the UN. OHCHR has previously called for, *inter alia*, review of these systems given the current

²⁴⁶ A/HRC/46/20, para. 61(d); United Nations, Human Rights Council, *Promoting Reconciliation, Accountability and Human Rights in Sri Lanka: Report of the United Nations High Commissioner for Human Rights*, A/HRC/49/9, 18 March 2022, para. 68(a); A/HRC/54/20, para. 66(d).

²⁴⁷ United States of America, Secretary of State Michael R. Pompeo, “Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act”, press statement, 14 February 2020.

²⁴⁸ United States of America, Secretary of State Antony J. Blinken, “The United States Promotes Accountability for Human Rights Violations and Abuses”, press statement, 10 December 2021.

²⁴⁹ United States of America, Department of State, Office of the Spokesperson, “Combating Global Corruption and Human Rights Abuses”, fact sheet, 9 December 2022.

²⁵⁰ United States of America, Secretary of State Antony J. Blinken, “Designation of Sri Lankan Governor Due to Involvement in a Gross Violation of Human Rights”, press statement, 26 April 2023.

²⁵¹ Canada, Special Economic Measures (Sri Lanka) Regulations, SOR/2023-2, 6 January 2023; Canada, Global Affairs Canada, “Sanctions Imposed on Sri Lankan State Officials”, 10 January 2023.

circumstances of the HRC-SL .²⁵² Interlocutors supported similar screening for bilateral exchanges or training opportunities. Support was also evinced for States using available powers to refuse accreditation or recognition of ambassadors or other senior diplomatic staff, in circumstances where they were credibly implicated in human rights violations, as part of avoiding giving “diplomatic cover” and immunities for such persons.

VIII. Conclusions and Recommendations

- 129.** Despite the passage of nearly 15 years since the end of the armed conflict, and many decades since the earliest waves of enforced disappearances in Sri Lanka, Sri Lankan authorities are still failing to ensure accountability for these violations. Few persons have been held criminally responsible through the criminal justice system. Impunity remains entrenched. Victims’ families remain in anguish without clarification of the fate and whereabouts of their loved ones and continue to suffer the devastating impact of enforced disappearances. Notwithstanding steps such as the criminalisation of enforced disappearance and the establishment of the Office on Missing Persons and the Office for Reparations, this has not translated into concrete results that would satisfy victims’ rights to truth, justice, reparations and guarantees of non-recurrence.
- 130.** Several Sri Lankan Presidential Commissions of Inquiry have established tens of thousands of cases of disappearances as well as the involvement of State security and affiliated paramilitary groups. However, elected officials remain in denial about the scale and responsibility for such violations. Financial payments offered by the State have been extremely limited and conditional upon acceptance of death/absence certificates. Victims express scepticism as to whether any new truth-seeking mechanism will fare better or contribute more than previous Presidential Commissions of Inquiry. No credible alternative has been advanced to the special mechanism with international assistance which was committed to under HRC resolution 30/1. Failure to implement comprehensive reforms in the security sector and other public sectors means that the State apparatus and some of its members credibly implicated in alleged disappearances remain in place, with some even promoted. Given the failure to take steps to bolster the independence of prosecutors and judges, undertake vetting and security sector reform, and repeal legislation allowing for draconian detention regimes, alongside a continuing history of impunity, there remains a risk of the future recurrence of enforced disappearances.
- 131.** The continuing accountability deficit in Sri Lanka is clear and unequivocal. Renewed action is needed at the domestic level to demonstrate from the highest levels, a commitment to holding individuals to account through criminal justice and other relevant processes, to support robust truth-seeking and acknowledgment, to provide appropriate reparations, based on consultations with victims, and to implement necessary reforms to prevent a recurrence. Given the current situation, it is vital for the international community to remain engaged with Sri Lanka on this issue, and to use all available powers to contribute to accountability, including continued advocacy with Sri Lankan authorities, the instigation of investigations and prosecutions using universal jurisdiction or other bases of jurisdiction, the appropriate imposition of targeted sanctions and other restrictive measures consistent with international law.
- 132.** The large number of enforced disappearances which have occurred in Sri Lanka continue to haunt and to wound both individuals and society as a whole and demand full accountability in accordance with international standards.

²⁵² A/HRC/49/9, para. 69(d).

Recommendations

133. Recommendations to the Government of Sri Lanka:

- (a) Acknowledge the occurrence of enforced disappearances on a mass scale since the 1970s, including the involvement of State security forces and armed groups, and issue a public apology on behalf of the State for its role in these violations.
- (b) Step up independent, impartial, prompt and thorough investigations into allegations of enforced disappearances and acts tantamount to enforced disappearances, holding those responsible to account through criminal and administrative processes, commensurate with the gravity of the crimes committed.
- (c) Ensure that mass graves are properly identified, protected, preserved and investigated, and that international standards are met, including through seeking and using available international technical assistance, in relation to the documentation, handling and analysis of exhumed human remains, to allow both for the identification of the remains and to contribute to relevant investigations.
- (d) Expedite the necessary amendments of the Constitution and criminal justice and associated legislation to ensure an effective framework for the investigation and prosecution of cases of enforced disappearance, including through incorporating crimes under international law into domestic law providing for all relevant modes of liability, including command responsibility.
- (e) Establish as a matter of urgency an independent prosecutorial authority, separate to the Attorney-General's function, to be able to assess relevant information and make independent prosecutorial decisions, including in relation to the thousands of enforced disappearance cases committed in previous decades.
- (f) Commit as a matter of priority to the establishment of a Special Prosecutor and an ad hoc special court as part of a comprehensive transitional justice strategy to address crimes related to the gross violations of international human rights law and serious violations of international humanitarian law that have occurred in Sri Lanka.
- (g) Ensure that victims and the Sri Lankan community have access to the truth about the enforced disappearances that have occurred. This also includes ensuring access to all relevant archives of the military and law enforcement sectors, as well as records in the National Archives.
- (h) Ensure that the Office on Missing Persons (OMP):
 - i. Plays an active role in combating intimidation and harassment of families of those forcibly disappeared and their representatives, including through monitoring and reporting on such intimidation and harassment, including surveillance and use of force against demonstrators.
 - ii. Takes further steps to improve relationships with victims' communities, including through ensuring victims are treated respectfully, improving outreach activities, increasing the transparency of the OMP's operations.
 - iii. Diversifies the staffing of the OMP, particularly in relation to gender, and ethnicity.
 - iv. Ensures that all future appointments to the OMP give proper regard to the need for the independence, impartiality, and integrity of all Commissioners.

- v. Prioritizes the carrying out of investigations to clarify the fate and whereabouts of disappeared persons, and reinforcing its capacity in relation to the identification of mass grave sites, exhumations of mass graves, and DNA testing.
 - vi. Updates national database of persons who have been disappeared, and ensure full access by relatives of the disappeared and their representatives.
 - vii. Publicly announces the results of its investigations, and make results accessible to the public, especially victim families, in a manner that respects the security and privacy of victims.
- (i) Publish all unpublished reports of previous Presidential Commissions of Inquiry and military Courts of Inquiry, including in a manner that makes them accessible to Sri Lankan society, in particular victim communities.
 - (j) Ensure that before any truth-seeking mechanism is established:
 - i. An enabling environment for transitional justice is created and that crucial confidence building measures are implemented including by ending all forms of threats, harassment and unlawful and arbitrary surveillance against human rights defenders and victims' groups, supporting initiatives to acknowledge and memorialize the experience of victims, and accelerating investigations and prosecutions into emblematic cases of human rights violations.
 - ii. Broad, meaningful and transparent consultation with victims are undertaken on any draft legislation.
 - iii. Any new truth-seeking mechanism is established as part of a comprehensive transitional justice strategy that also includes a judicial mechanism.
 - iv. Any truth-seeking mechanism will be led by persons of trusted impartiality, independence and competence, that the mechanism can operate without political interference, gender is appropriately integrated, the body is sufficiently funded, and there exists political will to implement recommendations of such a body.
 - (k) Protect, in law and in practice, victims, witnesses and their legal representatives against threats, intimidation, harassment and reprisals, including gender-based violence.
 - (l) Ensure that victims of enforced disappearance have adequate information about their rights, including their right to participate in the search for their relatives who have disappeared, and available remedies and are provided with adequate, prompt, effective and gender and age-sensitive reparations, with the form of reparations to be decided in consultation with victim communities.
 - (m) Adopt a comprehensive approach to reparations to include not only financial-related compensation, and psycho-social support, but also including acknowledgment, public apologies, memorialisation, assistance in searching for the disappeared, and, where relevant, the recovery, identification and reburial of bodies in accordance with the expressed wishes of victims, and medical and legal support.
 - (n) Ensure reparations are not conditional upon acceptance of a Certificate of Death or Absence, nor that those who have received one-off payments or interim relief are excluded from consideration. The criteria and process for eligibility should be accessible.

- (o) Take immediate steps to prevent the recurrence of enforced disappearances, including by repealing emergency related laws and the Prevention of Terrorism Act, ensuring that any replacement legislation is consistent with international human rights law, ensuring the strict application of existing legal criminal procedure safeguards and the proper judicial oversight of all those deprived of liberty, and undertaking a screening of personnel, particularly in military and law enforcement sectors, to remove those implicated in enforced disappearances.
- (p) Refrain from appointing or promoting credibly alleged perpetrators of human rights violations to high-level positions in the Government, the security sector, or diplomatic postings, as well as any institution established to achieve transitional justice and accountability.
- (q) Ratify the Rome Statute of the ICC, and recognize the competence of the Committee on Enforced Disappearance to receive and consider communications under article 31 of the ICPPED.
- (r) Cooperate with the United Nations Human Rights mechanisms and duly consider all their recommendations related to enforced disappearances and proceed to their implementation.
- (s) Cooperate with the Office of the United Nations High Commissioner for Human Rights, in relation to both its accountability-related work under HRC resolution 51/1, as well as its monitoring and technical assistance programmes.

134. Recommendations to the International Community:

- (a) Continue to monitor developments and progress towards accountability through the Human Rights Council. Should there be insufficient progress, the Human Rights Council should consider further international action to ensure accountability for conduct which amounts to crimes under international law.
- (b) Use all available forms of leverage, including bilateral and multilateral relationships, to stress the importance of a comprehensive approach to accountability, including achieving victims' rights to truth, justice, reparations and guarantees of non-recurrence.
- (c) Use all potential forms of jurisdiction, including under accepted principles of extraterritorial and universal jurisdiction, to investigate and prosecute crimes under international law committed in Sri Lanka, strengthen coordination in relation to ongoing investigations; and consider support for other avenues of international justice.
- (d) Consider further targeted sanctions, consistent with international law, against those who are credibly alleged to have been responsible for enforced disappearances and other gross violations and abuses of international human rights law or serious violations of international humanitarian law, as part of a wider range of accountability measures, while ensuring appropriate human rights safeguards.
- (e) Undertake careful screening for bilateral military exchanges and training programmes as well as deployment to UN peacekeeping, or other UN roles.
- (f) Continue to support programmes that provide support to victims of enforced disappearance, including in the fields of education, livelihood, mental health, psycho-social and legal support, and to initiatives that undertake human rights documentation.
- (g) Consider further support for the OMP and transitional justice mechanisms in Sri Lanka, conditional upon such mechanisms being consistent with international standards, designed

in consultation with the victims and civil society and part of a comprehensive approach to transitional justice that is victims-centred and gender-responsive.

- (h) Continue to support the specialized project of OHCHR established pursuant to HRC resolutions 46/1 and 51/1.



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