Boston College Third World Law Journal

Volume 23 | Issue 1 Article 4

January 2003

The Façade of Accountability: Disappearances in Sri Lanka

Wasana Punyasena

THE FAÇADE OF ACCOUNTABILITY: DISAPPEARANCES IN SRI LANKA

WASANA PUNYASENA*

Abstract: The current ceasefire between the Sri Lankan government and the Liberation Tigers of Tamil Eelam marks a watershed moment for the government to finally implement effective policies to halt the disappearance phenomenon and address issues of reconciliation. Despite the recognition of a range of institutional initiatives to combat and document disappearances, such efforts have been largely ineffective. This Note provides some concrete strategies to help limit the disappearance phenomenon within the Sri Lankan context.

An arrest has the trappings of legality and the rule of law; a kidnapping is at the whim of an individual.[1]

INTRODUCTION

Paramanathan Selvarajah[2] still recalls the clothing his son Selvarajah Prabhakaran wore that fatal day in July 1996, when he disappeared after being taken into army custody at the Chemmani checkpoint in northern Sri Lanka:[3] a light blue shirt, ash colored pants, and trinkets such as a gold chain, two rings, and a wristwatch.[4] Each provides a small visual memory of the son whose fate still remains uncertain. After the revelation of alleged mass graves in the region in 1996, numerous government setbacks slowed the process of their unearth-

---

* Symposium Editor, BOSTON COLLEGE THIRD WORLD LAW JOURNAL (2002–2003). This paper is dedicated to Dr. Neelan Tiruchelvam, my late Fulbright advisor, who was assassinated in a suicide bombing in July 1999. His commitment to finding peace for Sri Lanka inspires me to follow a path of promoting human rights.

[1] *See* SECRETARIAT OF THE INDEPENDENT COMM'N ON INTERNATIONAL HUMANITARIAN ISSUES, 1986, DISAPPEARED! TECHNIQUE OF TERROR: A REPORT FOR THE INDEPENDENT COMMISSION ON INTERNATIONAL HUMANITARIAN ISSUES 31 [hereinafter DISAPPEARED!].

[2] *See* Marwaan Macan-Markar, *The Haunting Ghosts of Chemmani*, TAMIL TIMES, July 15, 1999, at 13. Selvarajah now heads Jaffna's Guardian Association for the Families of the Disappeared. *Id.*

[3] *See id.*; *see also* Celia W. Dugger, *Graves of the Missing Haunt Sri Lanka*, N.Y. TIMES, Aug. 29, 2001, at A1.

[4] Macan-Markar, *supra* note 2, at 13.

ing.[5] Wrestling with the painful memories, Selvarajah pled, "[w]hy are they delaying this identification . . . ? The government is happy our children were killed."[6]

In many countries at war, governments forsake international human rights norms under the guise of national security.[7] Disappearances have become one such weapon used to suppress opposition.[8] The term "disappearance" is a euphemism to disguise the use of extrajudicial detentions and killings by state-sanctioned agents.[9] Agents arrest individuals without charge and hold them indefinitely while officials deny knowledge of their detention.[10] While in custody, agents torture and kill individuals and secretly dispose of their bodies to destroy evidence.[11]

---

[5] *See* UNIVERSITY TEACHERS FOR HUMAN RIGHTS (Jaffna), Sri Lanka, GAPS IN THE KRISHANTHY KUMARASAMY CASE: DISAPPEARANCES & ACCOUNTABILITY, at iii, http://www.uthr.org/SpecialReports/spreport12.htm (Apr. 28, 1999) [hereinafter GAPS IN THE KRISHANTHY KUMARASAMY CASE]; *see also* ASIAN HUMAN RIGHTS COMM'N, SRI LANKA: SLOW STEPS TOWARDS TRUTH AND JUSTICE EXHUMATION OF MASS GRAVES (1999), *at* http://www.ahrchk.net/hrsolid/mainfile.php/1999vol09no08/1217/(Aug. 8, 1999) [to be cited hereinafter as SLOW STEPS TOWARDS TRUTH]. In the rape and murder case of Krishanthy Kumarasamy, six service personnel were sentenced to death in July 1998. *See* SLOW STEPS TOWARDS TRUTH, *supra*. In wake of their sentences, one soldier divulged information on locations of supposed mass graves in Chemmani, four miles north of Jaffna, a Tamil-dominated city in northern Sri Lanka. *See also* Dugger, *supra* note 3, at A1. After protests by relatives due to delays in excavations, 15 bodies, bearing signs of blunt trauma, were exhumed, but no convictions have resulted against the killers. *See id.*

[6] *See* Dugger, *supra* note 3, at A1.

[7] *See* AMNESTY INT'L, "DISAPPEARANCES" AND POLITICAL KILLINGS: HUMAN RIGHTS CRISIS OF THE 1990S, A MANUAL FOR ACTION 13 (1994).

[8] *See id.*

[9] *See* JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 41 (1993). Disappearances, extrajudicial killings, and political killings usually accompany one another. *See* AMNESTY INT'L, *supra* note 7 at 97. Extrajudicial killings differ from disappearances in that they refer to deliberate, unlawful killings performed under an order given by the government or with the government's complicity or acquiescence. AMNESTY INT'L, GETTING AWAY WITH MURDER: POLITICAL KILLINGS AND DISAPPEARANCES IN THE 1990S, at 10 (1993). The combination of unlawfulness and governmental involvement symbolizes extrajudicial executions, which essentially become "murder committed or condoned by the state." AMNESTY INT'L, *supra* note 7, at 86. Political killings, on the other hand, are a wider phenomenon of extrajudicial killings and deliberate and arbitrary executions by armed political groups, usually in opposition to the government. *See* AMNESTY INT'L, *supra*, at 10.

[10] *See* DONNELLY, *supra* note 9, at 41.

[11] *See* AMNESTY INT'L, *supra* note 7, at 84–85.

Human rights organizations first coined the term "disappeared" ("*desaparecido*") in 1966, during secret government crackdowns on political opponents in Guatemala, with systematic documentation of disappearances developing through the mid 1970s.[12] Disappearances were unique in that "[p]eople were not killed by officials or at identifiable places, such as police stations, military headquarters, or death camps. They were kidnapped, tortured, and killed in secluded places by people who wore no uniforms."[13] As this form of political brutality became routine elsewhere on the continent, the Latin American media standardized the term "disappearance" to describe the phenomenon.[14]

Disappearances serve as a double form of torture, in which victims are kept ignorant of their own fates, while family members are deprived of knowing the whereabouts of their detained loved ones.[15] Moreover, in the wake of a disappearance, many families suffer from the loss of the household breadwinner, leading to extreme economic hardship and poverty.[16] Furthermore, relatives sometimes file habeas corpus cases, but courts frequently dismiss them for lack of evidence or because presiding judges remain loyal to the offending regime.[17] Relatives often lack effective tools to pursue justice and financial support from the government or may become victims themselves in their search for the truth.[18]

Even when governments more answerable to human rights norms replace repressive regimes, full accountability still may not materialize.[19] When pressed for thorough investigations into past violations and reparations for victims, many governments have denied re-

---

[12] *See* AMNESTY INT'L, *supra* note 9, at 13; *see also* DISAPPEARED!, *supra* note 1, at 20; Richard Goldstone, *Exposing Human Rights Abuses—A Help or Hindrance to Reconciliation*, 27 HASTINGS CONST. L.Q. 607, 611 (1995).

[13] Goldstone, *supra* note 12, at 611.

[14] *See* AMNESTY INT'L, *supra* note 9, at 13.

[15] *See* DISAPPEARED!, *supra* note 1, at 20.

[16] *See id.* at 21.

[17] *See* NUNCA MÁS: THE REPORT OF THE ARGENTINE NATIONAL COMM'N ON THE DISAPPEARED, at xiii (1986).

[18] *See* DISAPPEARED!, *supra* note 1, at 21.

[19] *See* Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 449, 452 (1990).

sponsibility to rectify past injustices.[20] Ironically, similar to their predecessors, current governments argue that a platform of forgetting and providing amnesty to perpetrators better serves the interests of national unity.[21] This tendency to conceal past wounds for the supposed current needs of the state assures that justice is never achieved.[22]

This Note analyzes disappearances through an in-depth case study of their use throughout the recent history of Sri Lanka. Part I of this Note presents a background on the disappearance phenomenon, as well as an analysis of the international legal protections used to combat this human rights crisis. This section further describes the strengths and weaknesses of these measures and highlights in particular whether they provide effective remedies and enforcement mechanisms. Part II launches into the Sri Lanka case study by providing a brief social and political analysis of the country's civil and political conflict. Understanding the roots of the divisions and tensions among groups perpetrating and being victimized by violations in the country is vital to comprehending the readiness of those in power to turn to disappearances to subdue people under their control. Part III scrutinizes the various methods the Sri Lankan government has constructed to address disappearances. Part IV concludes with recommendations for improving the governmental methods used in Sri Lanka to combat disappearances and to provide justice to those whose fates remain a mysteryI. DISAPPEARANCES UNREGULATED

Regimes can effectively cause tens of thousands of their own citizens to disappear due to the inherent nature of the "disappearance" process.[23] The organizational complexity of the practice, the state sponsorship of such abductions and killings, and the weaknesses of international legal norms designed to prevent the phenomenon all contribute to the problem.[24]

---

[20] *See id.*

[21] *See id.*

[22] *See id.*

[23] *See* AMNESTY INT'L, *supra* note 7, at 87–90, 106.

[24] *See id.* Each factor demonstrates the difficulty in combating not only disappearances, but also extrajudicial killings and political killings. *See id.*

A. *Organizational Complexity and State Sponsorship*

There is an innate organizational complexity within the disappearance process.[25] A person must be taken prisoner, transported to a detention center, and held there in secret with the awareness of governmental officials.[26] Amnesty International specifies the two elements necessary for a disappearance: 1) reasonable grounds exist to infer that an individual has been taken into custody by government authorities or the agents under their control and 2) such agents/authorities deny that the individual is in custody, concealing the person's whereabouts and fate.[27] The inherent hierarchy within the security force structure transfers to the process of abducting victims.[28] While some isolated incidents of disappearance occur without organized efforts, more often victims are selected through the command structure of a country's intelligence service.[29]

The element of secrecy within such operations neutralizes efforts to seek corrective remedies.[30] Concealment of evidence and harassment of remaining family members ensure that the perpetrators are never charged with crimes.[31] The government may also formalize the impunity by passing laws to discourage measures of redress.[32] To further avoid responsibility, the government may attribute responsibility for killings and disappearances to opposition forces and "death squads" not under governmental control.[33]

B. *International Legal Protections Against Disappearances, Extrajudicial Killings, and Political Killings*

Disappearances not only violate the national laws where they are perpetrated, but also violate international human rights standards.[34]

---

[25] *See id.* at 87.

[26] *See id.* at 88.

[27] AMNESTY INT'L, *supra* note 7, at 84.

[28] *See id.* at 88.

[29] *See id.*

[30] *See id.*

[31] *See id.* at 88–89.

[32] *See* AMNESTY INT'L, *supra* note 7, at 90.

[33] *See id.* at 89.

[34] *See id.* at 97.

Enforced disappearances violate several fundamental human rights and/or guarantees embodied in the Universal Declaration of Human Rights[35] and the International Covenant on Civil and Political Rights (ICCPR).[36] Both treaties, while outlining basic rights, also have elements that call for action.[37] Those guarantees include the right before the law to life, liberty, and security of the person;[38] to humane conditions of detention; and to be secure from torture, arbitrary arrest, or cruel, inhuman, or degrading punishment.[39] These rights attach even in a state of national emergency.[40] Each right is infringed upon during the course of a disappearance.[41]

---

[35] *See Universal Declaration of Human Rights*, G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948) [hereinafter *Universal Declaration*]; *see also* AMNESTY INT'L, *supra* note 7, at 105–06.

[36] *See International Covenant on Civil and Political Rights*, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter *ICCPR*]. *See generally Universal Declaration*, *supra* note 35. Both Article 5 of the Universal Declaration and Article 7 of the ICCPR establish that human beings have the innate right not be tortured or subjected to cruel, inhuman, or degrading treatment or punishment. *See ICCPR*, *supra*. *See generally Universal Declaration*, *supra* note 35. The ICCPR, by having the formal force of a treaty, commits those states that become parties to it to ensuring that the rights enumerated are protected and respected. *See ICCPR*, *supra*. *See generally Universal Declaration*, *supra* note 35. Amnesty International argues that the Universal Declaration, though not a treaty, has become so widely recognized that its provisions should be obligatory to all states. *See* AMNESTY INT'L, *supra* note 7, at 97–100.

[37] *See* AMNESTY INT'L, *supra* note 7, at 97–100. The Universal Declaration of Human Rights, though providing basic human rights standards, also envisions action. *See id.* The Preamble asks each individual and organ of society "to secure their universal and effective recognition and observance" "by teaching and education to promote respect for these rights" and "by progressive measures, national and international." *Universal Declaration*, *supra* note 35. The ICCPR, under Article 2, asks each state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized." *ICCPR*, *supra* note 36. It also encourages the adoption of "'legislative or other measures'" to give effect to such rights. *Id.* Though both the Universal Declaration and ICCPR ensure action based on their provisions, weak enforcement mechanisms negate their effectiveness. *See* AMNESTY INT'L, *supra* note 7, at 106.

[38] DISAPPEARED!, *supra* note 1, at 49.

[39] *See Universal Declaration*, *supra* note 35, at art. 5, 9; AMNESTY INT'L, *supra* note 7, at 99. Article 6 of the ICCPR states that "No one shall be arbitrarily deprived of his life," distinguishing extrajudicial executions from deaths resulting during armed conflict, which are legitimate under international humanitarian law. *ICCPR*, *supra* note 36. It also distinguishes from the use of the death penalty "where internationally established procedural safeguards and restrictions are observed." *Id.* Disappearances infringe on the right to life, as persons "may be arbitrarily executed or may die in detention through cruel treatment or . . . lack of care." DISAPPEARED!, *supra* note 1, at 49.

[40] *See* DISAPPEARED!, *supra* note 1, at 49.

[41] *See id.*

Disappearances also violate the right to family life and certain economic, social, and cultural rights, such as the right to education and an adequate standard of living.[42] Particularly in developing countries, the loss of the main economic support within a family may deprive the remaining family members of many rights enumerated in the International Covenant on Economic, Social and Cultural Rights.[43] Finally, the Convention on the Rights of the Child is violated when a child is directly or indirectly involved in a disappearance.[44]

Other international instruments adopted by the United Nations (UN) that protect rights violated through disappearances include the Body of Principals for the Protection of All Persons under Any Form of Detention or Imprisonment, the Code of Conduct for Law Enforcement Officials,[45] the Standard Minimum Rules for the Treatment of Prisoners, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principles on Executions),[46] and the Declaration on the Protection of All Persons from Enforced Disappearances (Declaration on Disappearances).[47] The rules enumerated are applicable to all detainees, including those detained for security reasons, before or after convictions.[48]

---

[42] *See* OFFICE OF THE HIGH COMM'R FOR HUM. RTS., FACT SHEET NO.6 (REV.2), ENFORCED OR INVOLUNTARY DISAPPEARANCES, *at* http://www.unhchr.ch/ html /menu6 /2 /fs6.htm (Jan. 5, 2001) [hereinafter OFFICE HIGH COMM'R].

[43] *See International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

[44] *See Convention on the Rights of the Child*, G.A. Res. 25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989).

[45] *See* AMNESTY INT'L, *supra* note 7, at 100, 120. Article 3 of the Code states: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." *Id.* The Code outlines that force should only be used when "strictly necessary" and should be proportional to the objectives. *Id.*

[46] *See id.* at 98–99, 120. The UN Committee on Crime Prevention and Control drafted these principles, and the General Assembly adopted them in 1989. *See id.* Article 1 states, "Governments shall prohibit by law all extra-legal, arbitrary and summary executions." *See* AMNESTY INT'L, *supra* note 7, at 98–99, 120.

[47] *See generally* OFFICE HIGH COMM'R, *supra* note 42. The UN Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted the Declaration after consideration. *Declaration on the Protection of All Persons from Enforced Disappearance*, G.A. Res. 133, U.N. GAOR, 47th Sess., Supp. No. 49, at 207, U.N. Doc. A/47/49 (1992) [hereinafter *Declaration on Enforced Disappearance*]. *See generally id.* Article 2 states, "No state shall practise, permit or tolerate enforced disappearances." *Declaration on Enforced Disappearance, supra;* AMNESTY INT'L, *supra* note 7, at 98–99.

[48] *See* DISAPPEARED!, *supra* note 1, at 50.

The Declaration on Disappearances, passed by the General Assembly in December 1992, specifies that an enforced disappearance occurs when:

> persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.[49]

Both the Declaration on Disappearances and the Principles on Executions ask authorities to "conduct impartial investigations into complaints and reports of these abuses, to bring the alleged perpetrators to trial, and to establish specific safeguards for the prevention of these abuses."[50]

The entire body of international instruments resolutely forbids the use of disappearances and extrajudicial killings.[51] Yet such practices continue in countries throughout the world.[52] The inherent weakness of international human rights protections develops from the lack of means to ensure that norms are being upheld.[53]

---

[49] *Declaration on Enforced Disappearance*, *supra* note 47, pmbl.

[50] AMNESTY INT'L, *supra* note 7, at 107.

[51] *See id.* at 104–05. These instruments include the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981). *See id.* International humanitarian law provides the rules of appropriate warfare. *See id.* at 101–04. International humanitarian law primarily includes the Geneva Conventions of 1949 and the Additional Protocols on International and Non-International Conflicts, adopted in 1977. *See generally* Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 UST 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1225 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1225 U.N.T.S. 609.

[52] *See* AMNESTY INT'L, *supra* note 7, at 98, 105.

[53] *See id.* at 105.

C. *Weaknesses in International Protections*

Though most countries are parties to many of the aforementioned treaties, the implementation problems develop from the treaties' weak enforcement mechanisms and the limited resources provided by the UN to ensure compliance.[54] While the UN calls on states to incorporate the provisions and instruments into their national legislation and allow for the training of officials in such norms, the organization rarely penalizes noncompliant countries.[55]

While the UN has created various bodies and mechanisms to ensure compliance with human rights and humanitarian norms, these mechanisms have suffered from weak enforcement.[56] One such body, the Commission on Human Rights, established in 1946, has become a highly politicized body with current allegiances divided on North-South lines.[57] Many of the resolutions seldom lead to the enhancement of the human rights situation within a condemned country.[58]

During the 1970s, the Commission created a second mechanism of special rapporteurs for both individual countries and specific issues.[59] Rapporteurs submit annual reports that provide recommendations and insist that states comply with their human rights treaty obligations.[60] The UN working groups mirror the work of the special rapporteurs.[61] Working groups issue annual reports and also collect information that they then use to confront offending states.[62]

---

[54] *See id.*

[55] *See id.* at 107. In Article 56, all UN member states "pledge themselves to take joint and separate action" with the UN to achieve "universal respect for, and observance of human rights." U.N. CHARTER art. 56.

[56] William G. O'Neill, *Gaining Compliance Without Force: Human Rights Field Operations, in* CIVILIANS IN WAR 93 (Simon Chesterman ed., 2001).

[57] *See id.* at 95.

[58] *See id.*

[59] *Id.* at 96. Thematic rapporteurs have mandates that cover "extrajudicial, summary, or arbitrary executions; torture; violence against women; religious freedom; and the independence of the judiciary, among other topics." *Id.*

[60] *See* O'Neill, *supra* note 56, at 96.

[61] *See id.* Working groups work on "such issues as contemporary forms of slavery, 'disappearances,' arbitrary detention, and the right to development." *Id.* After gathering and receiving information, they confront states with allegations and issue their findings in annual reports. *Id.*

[62] *See id.*

Although the establishment of working groups and rapporteurs considerably advances compliance of governments with human rights norms, both have major deficiencies.[63] First, neither working groups nor rapporteurs can visit offending countries without invitation.[64] Second, most of their reports are largely ignored.[65] Third, lack of salaries causes elected individuals to work only part-time. This limitation is exacerbated by small support staffs, due to the scarce resources allocated to the Office of the High Commissioner for Human Rights.[66]

The final compliance mechanism is the human rights treaty body. Treaties have their own compliance and oversight bodies embedded within their structures.[67] The First Optional Protocol to the ICCPR allows individuals to raise concerns directly to the Committee after exhausting domestic options for redress.[68] Treaty bodies can be potentially powerful mechanisms to ensure compliance but have remained weak due to inadequate enforcement power.[69] Many states remain reluctant to admit human rights and humanitarian abuses within their borders.[70] At the same time, experts, as volunteers, have the same funding constraints from the High Commissioner as working groups and special rapporteurs.[71] In addition, the Committee lacks jurisdiction over states that have not ratified such treaties, many of which, not suprisingly, have some of the worst human rights records.[72]

---

[63] *See* O'Neill, *supra* note 56, at 96.

[64] *See id.*

[65] *See id.*

[66] *See id.* at 96–97.

[67] *See id.* at 97. For example, the ICCPR's treaty body, or the Human Rights Committee, is composed of 18 experts, who review reports submitted by states that have ratified the treaty. *See* O'Neill, *supra* note 56, at 97. At several annual meetings, state representatives answer questions on the human rights situation in their countries and issues within the report, and the Committee publishes its findings. *See id.*

[68] *See id.*

[69] *See id.* The periodic reports from such bodies are also often produced late and are usually "vague or downright misleading." *Id.*

[70] *See* O'Neill, *supra* note 56, at 97.

[71] *See id.*

[72] *See id.*

D. *Weaknesses of the United Nations Working Group on Enforced and Involuntary Disappearances*

To address disappearances in particular, the UN established the UN Working Group on Enforced or Involuntary Disappearances (UNWGEID) in 1980, the first of the thematic mechanisms created by the Commission on Human Rights to serve as a "channel of communication" between victims, families, and non-governmental organizations and governments.[73] The body has the broad mandate "to examine questions relevant to enforced or involuntary disappearances of persons" by "seek[ing] and receiv[ing] information from Governments, intergovernmental organizations, humanitarian organizations and other reliable sources."[74] The UNWGEID must submit an annual report to the Commission on Human Rights.[75] Since its establishment, 49,546 cases of disappearances have been transmitted to governments.[76] While stressing the importance of providing families with the truth about the fate of their relatives, "the group has refrained from accusing governments [of violations], adopting instead a non-judgmental approach to secure the cooperation of governments in clarifying the facts."[77]

---

[73] OFFICE HIGH COMM'R, *supra* note 42; *see also* O'Neill, *supra* note 56, at 95–98; AMNESTY INT'L, IMPLEMENTATION OF THE RECOMMENDATIONS OF THE UN WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES FOLLOWING THEIR VISITS TO SRI LANKA IN 1991 AND 1992, *at* http://web.amnesty.org /ai.nsf/Index/ASA ... 1998?OpenDocument&of=COUNTRIES\SRI+LANKA (Feb. 1, 1998). The UN Commission on Human Rights mandates UN thematic experts or mechanisms. *See* O'Neill, *supra* note 56, at 95.

[74] AMNESTY INT'L, *supra* note 7, at 185–86. The Working Group on Disappearances has developed a number of innovative strategies to achieve its mission. *See id.* The group receives and examines reports on individual cases submitted to it; it has devised an "urgent action procedure" to submit reports to governments between sessions in order to save lives; it sends responses from governments to the original complainants; and has implemented a "prompt intervention" procedure to deal with incidents where intimidation and reprisal of individuals or organizations are involved. Members of the group have visited countries and provided recommendations. *Id.* at 185.

[75] *See generally* OFFICE HIGH COMM'R, FACT SHEET DISAPPEARANCES, *supra* note 42.

[76] *Report of the Working Group on Enforced or Involuntary Disappearances: Civil and Political Rights, Including the Questions of Disappearances and Summary Executions*, U.N. ESCOR, Comm'n on Hum. Rts., 57th Sess., Agenda Item 11(b), U.N. Doc. E/CN.4/2001/68 (2000), at 3. [hereinafter *Working Group 2000*]. "The total number of cases being kept under active consideration, as they have not yet been clarified ... stands at 45,998." *Id.*

[77] *See* AMNESTY INT'L, *supra* note 7, at 196.

After receiving and examining reports of disappearances submitted by various individuals and civil society organizations within a particular country, the UNWGEID transmits individual cases to the governments involved to push them to investigate and inform the UNWGEID of their findings.[78] While these reports serve as an important mechanism to raise international scrutiny over certain countries, they usually reflect only a fraction of the disappearance epidemic.[79] The recommendations also provide no compliance mechanisms by which governments may be forced to implement the guidelines provided.[80]

While UN-created institutions can provide recommendations to states, the primary duty falls on governments to combat disappearances.[81] Governments must create effective prevention tactics before disappearances occur, devise successful legal mechanisms to investigate occurrences, and end the reign of impunity for violators of human rights.[82] A brief background of Sri Lanka's conflict will demonstrate the context against which the disappearance epidemic has plagued the nation.

II. Sri Lanka's Turbulent Past

Sri Lanka, with one of the most "complex plural societies in any part of the world," has three major ethnic groups and four major religions.[83] The last three decades produced two armed insurrections in

---

[78] *See* Office High Comm'r, *supra* note 42.

[79] *See* Amnesty Int'l, *supra* note 7, at 187–88.

[80] *See id.* at 188.

[81] *See id.* at 108. This perspective is specifically embraced in Article 2 of the ICCPR. *See ICCPR*, *supra* note 36. Judgments and decisions delivered by the Inter-American Court of Human Rights, a court established under the terms of the ICCPR, reinforce this duty. *See* Amnesty Int'l, *supra* note 7, at 108. In the Inter-American Court's *Velásquez Rodriguez* judgment, the Court said that the "[s]tate has a legal duty to take responsible steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed." *Id.*

[82] *See* Amnesty Int'l, *supra* note 7, at 108–09; Interview with M.C.M. Iqbal, Secretary, Presidential Commission on Inquiry into Involuntary Removals and Disappearances of Persons in Sri Lanka, in Colombo, Sri Lanka (Mar. 2000).

[83] *See* K.M. de Silva, Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka 7 (1998). De Silva divides the population of the country into three ethnic groups—Sinhalese, Tamil, and Muslim—and four major religions—Buddhism, Hinduism, Islam, and Christianity. *See id.* The Sinhalese constitute a majority in Sri Lanka, the bulk of

the south and an unwinnable war in the north and east.[84] Though the war has been divided predominately along ethnic lines, with the majority Sinhalese Government forces fighting against the Tamil rebel group, the Liberation Tigers of Tamil Eelam (LTTE), much intra-ethnic conflict has also emerged.[85] The conflict in Sri Lanka has had a disastrous impact on the effective protection of human rights.[86]

---

whom are Buddhists. *See id.* at 8. Some argue, however, that a majority within a minority complex emerges regionally when Sinhalese view their numbers dwarfed in relation to Tamil identification in southern India, particularly to the state of Tamilnadu. *See id.* Cultural distinctiveness develops between the two groups through religion (predominately Theravada Buddhism and Hinduism) and language (Sinhala and Tamil). *See id.* Two distinct groups exist within the Tamil minority population, the Sri Lankan Tamils and the Indian Tamils, the latter brought to work on tea plantations by colonial British planters in the nineteenth and early twentieth centuries. *See* DE SILVA, *supra*, at 8–9. Sri Lankan Tamils are concentrated in the northern and eastern parts of the country, while Indian Tamils live predominately on the plantations in central Sri Lanka (the hill country). *See id.* at 9. The plantation Tamils are generally considered "low" caste by the Sri Lankan Tamil elite, "the Indian Tamils being, in the main, plantation workers. While there is no convergence of political attitudes and objectives between them [Indian Tamils] and the Sri Lankan Tamils, especially the most activist armed groups, there is... considerable sympathy from the hill country or Indian Tamils for the latter in the... struggle with the Sri Lankan state." *Id.* The third major ethnic group, the Muslims, concentrate in the Eastern Province. While mostly Tamil-speaking, the Muslims in Sri Lanka have maintained political separation from Tamil parties and have strongly opposed the establishment of a separate Tamil state. *See id.* at 11.

[84] *See* Lisa M. Kois et al., *Sri Lanka's Civil War & Prospects for Post-Conflict Resolution*, WPF REPORTS, No. 18, 5–7 (1998). In the 1970s and late 1980s to early 1990s, the *Janatha Vimukthi Peramuna* (JVP), a Sinhalese leftist nationalist party, also orchestrated southern insurrections. *See id.*

[85] *See id.* at 5; *see also* Purnaka L. de Silva, *Hatred and Revenge Killings: Construction of Political Violence in Sri Lanka*, *in* MATTERS OF VIOLENCE: REFLECTIONS ON SOCIAL AND POLITICAL VIOLENCE IN SRI LANKA 15, 16 (Jayadeva Uyangoda & Janaka Biyanwila eds., 1997); Robert I. Rotberg, *Sri Lanka's Civil War: From Mayhem Toward Diplomatic Resolution*, *in* CREATING PEACE IN SRI LANKA 1, 4 (Robert I. Rotberg ed., 1999); Chris Smith, *South Asia's Enduring War*, *in* CREATING PEACE IN SRI LANKA, *supra*, at 17, 18. Many experts claim that the official war began in 1983, when the deaths of 13 government soldiers in Jaffna sparked anti-Tamil riots throughout the country, leaving 600 people dead. *See* DE SILVA, *supra* note 83, at 7; *see also* Smith, *supra*, at 7. Other scholars argue that the political instability came in three stages, from 1955 to 1961, to the violence in the 1970s, which culminated in riots in 1977, until the violent outbreak in 1983. *See* DE SILVA, *supra* note 83, at 7. Vellupillai Prabhakaran formed the LTTE in 1973. *See* Smith, *supra*, at 7. The Marxist extremist group spearheaded Tamil separatism through terror and violence to achieve an independent homeland called Eelam. *See id.*

[86] *See* LAW & SOC'Y TRUST, SRI LANKA: STATE OF HUMAN RIGHTS 1999, at 21–23 (1999); *see also* BBC News Online, *Peace Deal in Sri Lanka*, *at* http: //news.bbc.co.uk /hi /english/world/south_asia/newsid_1833000/1833230.stm (Feb. 21, 2002). Prime Minister Ranil Wickramasinghe and the Liberation Tamil Tigers of Tamil Eelam (LTTE), the pri-

The politicization of ethnic and religious separations has led to the elevation of the conflict in Sri Lanka.[87] After obtaining independence from British rule in 1948, the governments in power adopted a series of Sinhalese-nationalist policies.[88] Such policies effectively disenfranchised portions of the Tamil population, made Sinhala the national language, and afforded Buddhism state protection.[89]

Fueled by decades of marginalization, the 1970s brought a new sense of militancy to Tamil frustration.[90] The resulting disturbances led to the strengthening of extremist youth groups within the Tamil community, including the LTTE.[91] The deaths of government soldiers in Jaffna in 1983 sparked anti-Tamil riots throughout the country and deepened tensions between the two sides.

After 1983, the violence orchestrated by both sides became "organized, routinized, and systemized through disappearances, torture,

---

mary Tamil extremist group, signed a ceasefire brokered by Norwegian delegates on February 21, 2002, providing hope for an end to the conflict. *See* BBC News Online, *supra*.

[87] *See* DE SILVA, *supra* note 83, at 12.

[88] *See* RAJAN HOOLE, SRI LANKA, THE ARROGANCE OF POWER: MYTHS, DECADENCE AND MURDER 7 (2001). The Citizenship Acts of 1948/1949 effectively disenfranchised Indian Tamils by labeling them non-citizens. *See id.* The "Sinhala Only" Act of 1956, otherwise known as the Official Language Act No. 33 of 1956, legitimized the call of the Sinhalese nationalists to make Sinhala the official state language, which spurred riots in 1958. *See id.* at 51, 179; *see also* DE SILVA, *supra* note 83, at 51. In reality, Sri Lanka remained a bilingual nation, particularly in the arena of education, where students had a right to be educated in their mother tongue. *See* DE SILVA, *supra* note 83, at 59. The Constitution of 1978 maintained Sinhala as the official language but recognized Tamil as a national language. SRI LANKA CONST. art. 18–19. By 1972, the Constitution elevated Buddhism, practiced by the Sinhalese majority to a religion officially protected by the state: "The Republic of Sri Lanka shall give Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster Buddhism while assuring to all religions the rights guaranteed by section 18(1)(d)." *Id.* at ch. II.

[89] *See* HOOLE, *supra* note 88, at 7; *see also* DE SILVA, *supra* note 83, at 15.

[90] *See* DE SILVA, *supra* note 83, at 139. The Tamil United Liberation Front (TULF), which formed in 1976, began to push for a separate state for Tamil-speaking areas in the north and east. *See id.* at 139. "Separatist agitation went through several stages and phases, beginning with peaceful political pressure, moving on to civil disobedience, and then to violence, and that violence itself graduated from sporadic acts to more systematic attacks . . . ." *Id.* at 151. The Vaddukodai resolution of 1976 demonstrates the TULF call for a separate state: "Whereas throughout the centuries . . . the Sinhalese and Tamil nations have divided between them the possession of Ceylon (Sri Lanka) . . . Tamil Eelam shall consist of the Northern and Eastern Provinces." *Id.* at 155. In 1977 communal riots elevated to severe evels and spread to parts of the country not witnessed before in Sri Lanka. *See id.* at 164.

[91] *See* DE SILVA, *supra* note 83, at 180.

rape, checkpoint searches, and massacres of entire villages in remote areas."[92] In particular, the creation of a new police commando unit, the Special Task Force, fueled the secret disposal of bodies of those arrested or detained.[93]

Except for a brief six-month hiatus in 1989, a nationwide state of emergency has continuously been in force since May 1983.[94] As the conflict intensified between 1983 and mid-1987, many human rights violations occurred in the northern and eastern regions of the country, where Tamil communities dominate.[95] The numbers of disappearances increased, as emergency regulations adopted by the government promoted torture without accountability and allowed for the effective concealment of prisoner killings.[96]

During this period of continuous emergency rule, the government admits that approximately 16,742 people disappeared, although human rights groups estimate a higher figure of 60,000.[97] The failure of the government to stop the exponential progression of disappear-

---

[92] Darini Rajasingham-Senanayake, *The Dangers of Devolution: The Hidden Economies of Armed Conflict, in* CREATING PEACE IN SRI LANKA, *supra* note 85, at 57, 57–58.

[93] *See* AMNESTY INT'L, *supra* note 9, at 15.

[94] *See* AMNESTY INT'L, *supra* note 7, at 28. President Ranasinghe Premadasa lifted the state of emergency in 1989 following his election as President. *See id.*

[95] *See* Kois et al., *supra* note 84, at 8; *see also* AMNESTY INT'L, *supra* note 7, at 26.

[96] *See* AMNESTY INT'L, SRI LANKA GOVERNMENT'S RESPONSE TO WIDESPREAD "DISAPPEARANCES" IN JAFFNA, *at* http://web.amnesty.org/ai.nsf/Index/ASA37024199 7?OpenDocument&of=THEMES\DISAPPEARANCES (Nov. 27, 1997); *see also* AMNESTY INT'L, *supra* note 7, at 26; AMNESTY INT'L, *supra* note 9, at 15. From 1984 to mid-1987, Amnesty International recorded 680 disappearances. *See* AMNESTY INT'L, *supra* note 9, at 15. In 1990, after Indian troops left and armed conflict resumed between the Government and LTTE, disappearances climbed into the thousands. *See id.*

[97] *See* Priyadharshini Dias, Involuntary Disappearances and Other Violations of Human Rights—Sri Lankan Experience, Lawyers' and Activists' Conference on Human Rights, at 2 (unpublished manuscript of paper delivered at conference on Jan. 11–13, 2002, on file with author). The Organisation of the Parents and Family Members of the Disappeared (OPFMD) estimates that between 40,000 and 60,000 people disappeared between 1983–1990. *See id.* Authorities categorize the large numbers of disappearances into three periods: 1) during Eelam War I, when Tamils predominantly disappeared (1980–1987); 2) during the JVP insurrection, when Sinhalese predominantly disappeared (1987–1989); and 3) during Eelam Wars II and III, when Tamils predominantly disappeared (1990-present day). *See* J.S. Tissainayagam, *Human Rights and the NGOs*, THE SUNDAY LEADER (Colombo), Apr. 16, 2000, *available at* http:// www.lanka.net/sundayleader/2000/Apr/16/issues.html.

ances developed, in part, from the failure of legal safeguards to withstand the corrosive effects of the emergency regulations.[98]

A. *Breakdown of the Legal System*

Although the normal legal system in Sri Lanka contains safeguards to prevent disappearances and extrajudicial executions, the continuous years of emergency rule and growing tensions with rebel groups has undermined such protections.[99]

Article 9(1) of Sri Lanka's Constitution guarantees that "[a] person shall not be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."[100] Article 10 provides further protections against arbitrary arrest.[101] Violations of fundamental rights outlined in the Constitution are justiciable before the Supreme Court and before the Human Rights Commission of Sri Lanka.[102] Violations

---

[98] AMNESTY INT'L, *supra* note 7, at 25.

[99] *See id.* Under emergency rule, Emergency (Miscellaneous Provisions and Power) Regulations, which must be approved and renewed monthly by Parliament, come into force. *See id.* at 28. The Sri Lankan Public Security Ordinance (PSO) No. 25 of 1947, as amended, allows the president to declare a state of emergency "in the interest of public security and the preservation of public order" and to maintain supplies and services "essential to the life of the community." Deepika Udagama, *Taming of the Beast: Judicial Responses to State Violence in Sri Lanka*, 11 HARV. HUM. RTS. J. 269, 277-78 (1998); *see also* AMNESTY INT'L, *supra* note 7, at 28. Section 5 of the PSO gives the President power to promulgate emergency regulations which may override existing law but cannot supersede the Constitution. *See* Udagama, *supra*, at 278.

[100] SRI LANKA CONST. ch. III, art. 9(1).

[101] *See id.* at ch. III, art. 10. Article 10(1) and (2) state:

> (1) A person shall not be arrested, imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law. (2) Save as otherwise provided by law, a person shall not be arrested except under a warrant issued by a judicial officer causing such person to be apprehended and brought before a competent court in accordance with procedure prescribed by law.

Id.

[102] Ministry of Foreign Affairs, Periodic Report Under the International Covenant on Civil and Political Rights 7 (1999) (unpublished manuscript, on file with author); *see also For the Record 2001: The UN Human Rights System 3, Sri Lanka*, Human Rights Internet (HRI), *at* http://www.hri.ca/fortherecord2001/vol3/srilankarr.htm (last visited Mar. 23, 2002) [hereinafter *For the Record 2001*]. Sri Lanka's fourth and fifth periodic reports were due in September 1996 and 2001, respectively. *For the Record 2001*, *supra*. The Supreme Court has exclusive jurisdiction over cases involving "infringement or the imminent infringement by executive or administrative action of any fundamental right or language right," as outlined in Article 126. SRI LANKA CONST. art. 126.

of citizens' rights and other injunctions by public officers may be brought before the Ombudsman, the Office of the Parliamentary Commissioner of Administration.[103] Article 141 allows the Court of Appeal to grant and issue writs of habeas corpus to hear cases involving, "(a) the body of any person to be dealt with according to law; or (b) the body of any person illegally or improperly detained in public or private custody, and to discharge or remand any person so brought up."[104]

Despite these protections, the growing opposition by Tamil secessionists in the late 1970s allowed Parliament to enact the Prevention of Terrorism Act (PTA) in 1979, which temporarily allowed for the prevention of terrorism and other unlawful activities through the suspension of certain rights of criminal procedure, particularly with regard to detention and arrest.[105] Specifically, the PTA eliminates the legal requirement that a suspect be brought before a judicial office within 24 hours of arrest for an official detention decision to be rendered.[106] In 1982, the government amended and incorporated the PTA permanently into national law, where it continues to be used.[107]

---

[103] SRI LANKA CONST. art. 126. The Ombudsman, established in 1981, has the duty to investigate and report on "complaints or allegations of the infringement of fundamental rights and other injustices by public officers of public corporations, local authorities and other like institutions." Ministry of Foreign Affairs, *supra* note 102, at 8. The office was designed to provide "expeditious and inexpensive means" for the public to settle their grievances. *Id.*

[104] SRI LANKA CONST. art. 141. Although the Constitution "does not provide for the right to life, illegal abductions can be challenged in terms of Article 13 . . . within the limitations provided in Article 126." *See* Dias, *supra* note 97, at 6. Though the Government claims that the writ acts as a deterrent even under a state of emergency, the limited number of prosecutions involving perpetrators of disappearances calls into question such a statement. *See* Ministry of Foreign Affairs, *supra* note 102, at 17.

[105] *See* Udagama, *supra* note 99, at 275. The government passed the PTA initially for a period of only three years. *See* AMNESTY INT'L, *supra* note 7, at 28; *see also* Udagama, *supra* note 99, at 276.

[106] *See* Udagama, *supra* note 99, at 275.

[107] *See id.*; *see also* Prevention of Terrorism (Temporary Provisions) Act, No. 48 (1979) (amended 1982) (Sri Lanka), *available at* http://www.peacebrigades.org/lanka/slppta.html [hereinafter PTA]. Sections six and nine of the Act largely expand the state's powers of arrest and detention. *See* PTA, *supra*. Section nine of the PTA empowers ministers "to order the detention of a person for up to eighteen months without judicial supervision, where the Minister 'has reason to believe or suspect that any person is connected with or concerned in any unlawful activity.'" PTA, *supra;* Udagama, *supra* note 99, at 276. Section six allows "police to arrest, search a person or premises and to seize any document or item without warrant, and allows the police to detain a person for three days without judicial

Though a state of emergency may occasionally be necessary to prevent a nation from "falling into chaos," such necessity should not permit abuse by the government and excessive infringement of fundamental rights.[108] The Sri Lankan government, however, has used the emergency regulations to normalize the use of grave human rights offenses, weakening basic standards of good governance and the rule of law in the country's parliamentary democracy.[109]

Additional emergency regulations passed between May and September 2000 worsened an already catastrophic situation.[110] New provisions granted members of the army and police the right to arrest and detain any person engaged in activities considered to be a threat to national security, authorized media censorship, and restricted freedom of association.[111] The new regulations also conferred the power of arrest to "any authorized person," rather than just state actors.[112] The expanded powers contributed to the increase in disappearances during the period.[113] The draconian security laws continued to provide prime conditions for "arbitrary arrest, lengthy detention of suspects without trial, and attendant abuses" through 2001.[114]

B. *Non-Government Entities Add to the Disappearance Epidemic*

As in the case of many countries in conflict, the Sri Lankan government was not the only culprit guilty of human rights violations.[115]

---

supervision if there is a reasonable suspicion that the person is connected with any unlawful activity." *See* PTA, *supra*; Udagama, *supra* note 99, at 276.

[108] INT'L COMM'N OF JURISTS, STATES OF EMERGENCY: THEIR IMPACT ON HUMAN RIGHTS 413–14 (1983).

[109] *See* Neelan Tiruchelvam, *Emergency Debate: September 6, 1994*, *in* TRANSCENDING THE BITTER LEGACY: SELECTED PARLIAMENTARY SPEECHES 1 (Lisa Kois ed., 2000); *see also* BRADMAN WEERAKOON & SHELTON WANASINGHE, REFLECTIONS ON GOVERNANCE 5 (1994).

[110] *See* AMNESTY INT'L, SRI LANKA: NEW EMERGENCY REGULATIONS—EROSION OF HUMAN RIGHTS PROTECTION 1, *at* http://www.web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA370192000ENGLISH/$File/ASA3701900.pdf (July 1, 2000); BBC News Online, *Sri Lanka Invokes Terror Laws*, *at* http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1424000/1424145.stm (July 5, 2001).

[111] *See* AMNESTY INT'L, *supra* note 110, at 1.

[112] *See id.*

[113] *See id.*

[114] HUM. RTS. WATCH, WORLD REPORT 2002: EVENTS OF 2001, NOVEMBER 2000–NOVEMBER 2001, at 252 (2002).

[115] *See* AMNESTY INT'L, *supra* note 7, at 30.

For example, after solely targeting "traitors" who supported the ruling government, the LTTE conducted more indiscriminate civilian attacks in later years.[116] Within their own courts, the LTTE publicly executed Tamils, often tying their bodies to lampposts to deter further insubordination.[117] For the LTTE, eliminating dissent within the Tamil community was crucial to maintaining control.[118]

A number of Tamil militias that have aligned themselves with past governments have also used disappearances extensively.[119] International human rights groups and foreign state departments have accused the People's Liberation Organization of Tamil Eelam (PLOTE), and the Tamil Eelam Liberation Organization (TELO) of being major human rights offenders.[120] Many of these paramilitary forces have held their detainees in unofficial detention centers, where torture is a common practice.[121] The secrecy and undeclared nature of these centers weakened the Human Rights Commission (HRC) of Sri Lanka's mandate to investigate and enforce respect for human rights by these

---

[116] *See id.* at 30–31.

[117] *See* U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1999, SRI LANKA 2436, *available at* http://www.state.gov/www/global/human_rights/1999_hrp_report/srilanka.html (Feb. 25, 2000) [hereinafter U.S. DEPT. OF STATE, 1999].

[118] *See* AMNESTY INT'L, *supra* note 7, at 31.

[119] *See* U.S. DEPT. OF STATE, 1999, *supra* note 117, at 2436.

[120] *See* U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001: SRI LANKA 2535–36, 2538, 2540–41 *available at* http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8241.htm (Mar. 4, 2002) [hereinafter U.S. DEPT. OF STATE, 2001]; *see also* Kishali Pinto Jayawardene, *Torture Amidst the New Year Crackers*, THE SUNDAY TIMES (Colombo), Apr. 16, 2000, at 10 (describing the letter from the UN Special Rapporteur on Torture to the Sri Lankan President dated Nov. 15, 1999).

[121] *See* AMNESTY INT'L, SRI LANKA: TORTURE IN CUSTODY 8–9, http://web.amnesty.org/aidoc/aidoc_pdf.nsf/index/ASA370101999ENGLISH/$File/ASA3701099.pdf (June 1, 1999); *see also* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2541; Frederica Jansz, *UNHCR Says All Unofficial Places of Detention Must Be Dissolved*, THE LANKA ACADEMIC, *at* http://www.lacnet.org/the_academic/archive/2000/2000_04_27 (Apr. 28, 2000). At its 56th session, the United Nations Human Rights Commission (UNHRC) called for all unofficial places of detention maintained by paramilitary organizations, such as the People's Liberation Organization of Tamil Eelam (PLOTE) and the Tamil Eelam Liberation Organization (TELO), to be dissolved. *See generally* Jansz, *supra*. The UNHRC stated that the Sri Lankan government has not implemented any of its nine recommendations to prevent enforced disappearances or to bring the country up to internationally accepted standards of human rights. *See generally id.*

groups.[122] The secrecy of such organizations deters efforts to determine the exact number of victims.[123] With the exception of placing tighter restrictions on weapons, the government has not acted to stop militia actions.[124]

C. *Political Maneuvers*

The present government adopted a ceasefire with the LTTE on February 21, 2002, through Norweigan mediation.[125] Though the details of the peace plan have not been publicly outlined and negotiations continue, the movement towards a cessation in the fighting will improve the ability of the government and the LTTE to effectively address the problem of disappearances.[126] Maintaining the ceasefire will be the most difficult task facing the new government, evidenced by the fact that President Kumaratunga failed to maintain such a peace during the early years of her government's rule, which began in 1994.[127]

By 2000 the United Nations Working Group on Enforced or Involuntary Disappearances had named Sri Lanka as a country with one of the highest numbers of "nonclarified" disappearances in the

---

[122] *See Report of the Working Group on Enforced or Involuntary Disappearances: Civil and Political Rights, Including Questions of Disappearances and Summary Executions: Report on the Visit to Sri Lanka by a Member of the Working Group on Enforced or Involuntary Disappearances*, U.N. ESCOR, Comm'n on Human Rights, 56th Sess., Agenda Item 11(b), U.N. Doc. E /CN.4 /Add.1/2000/64 (1999), at 10, ¶44 [hereinafter *Working Group 1999*]; *see also* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2542.

[123] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2538.

[124] *Id.* at 2540. Tighter restrictions were "implemented following a May 1999 shootout between PLOTE and TELO supporters near a popular shopping center in downtown Colombo. Despite the restrictions on weapons, the TELO and PLOTE had a shootout in Vavuniya in August." *Id.*

[125] *See* BBC News Online, *supra* note 86. The peace talks in late October through early November 2002 established three committees to examine rehabilitation needs in war-hit areas, to push military de-escalation, and to look at political questions at the heart of the 19 year civil war. BBC News Online, *Rapid Progress to Sri Lanka Peace, at* http://news.bbc.co.uk/2/hi/south_asia/2393271.stm (Nov. 3, 2002).

[126] *See generally* BBC News Online, *supra* note 86; BBC News Online, *supra* note 125.

[127] *See* Teresita C. Schaffer, *Peacemaking in Sri Lanka: The Kumaratunga Initiative, in* CREATING PEACE IN SRI LANKA, *supra* note 85, at 131–32. Early initiatives in 1994–1995 to form a ceasefire ended on April 19, 1995, when the LTTE destroyed two Sri Lankan naval craft and, within five days, shot down two air force planes. *See id.* at 132.

world.[128] Accountability for past crimes should develop from targeted and effective strategies to rein in human rights violators.[129] Past techniques used by previous Sri Lankan governments to address disappearances must be analyzed to provide guidance in developing more successful models to halt the lawless phenomenon.

III. Methods and Strategies the Sri Lankan Government Has Undertaken to Deal with Disappearances

Allowing impunity for serious violations of human rights remains an incredible international problem.[130] Many countries recently emerging from a repressive past must decide how best to address the abuses of former regimes. This could involve initiating official investigations of prior regimes in order to ingrain the rule of law within their societies, establishing truth and reconciliation commissions that disallow prosecutions in exchange for confessions of guilt for past human rights abuses, or neither.[131] Governments have had to decide whether or not some or most of those responsible for the worst crimes should be brought to justice, even if this means annulling a previous amnesty law or risking violent backlash by military or security forces.[132] Such countries must also decide whether to establish compensation schemes to provide for the victims and/or their families.[133] The Sri Lankan government has initiated a series of measures in an effort to deal with the problem. Unfortunately, many of these initiatives hide underlying political agendas.[134]

---

[128] *See* U.S. Dept. of State, 2001, *supra* note 120, at 2539.

[129] *See generally* J.S. Tissainayagam, *Human Rights: No Changes, Only Window Dressing*, The Sunday Leader (Colombo), Mar. 5, 2000, *available at* http://www.lanka.net/sundayleader/2000/Mar/05/issues.html.

[130] *See* Naomi Roht-Arriaza, *Introduction*, *in* Impunity and Human Rights in International Law and Practice 3 (Naomi Roht-Arriaza ed., 1995).

[131] *See id.* at 4. A modified form of a truth commission can also be established, in which "the most serious offenders [of human rights abuses] remain subject to loss of office or even prosecution." Goldstone, *supra* note 12, at 609.

[132] Roht-Arriaza, *supra* note 130, at 4.

[133] *See id.* at 4.

[134] *See* Amnesty Int'l, *supra* note 7, at 32; *see also* Tissainayagam, *supra* note 129.

A. *Politicized Investigative Commissions*

In the last decade, the Sri Lankan government has established commissions to investigate massive human rights violations of recent origin.[135] Under public pressure, President Ranasinghe Premadasa established the Presidential Commission of Inquiry into the Involuntary Removal of Persons in January 1991, but because its mandate of investigation started only from January 11, 1991, it missed the entire slew of violations that occurred during the *Janatha Vimukthi Peramuna* (JVP) and LTTE uprisings prior to 1991.[136] Even when D.B. Wijetunga came to power after President Premadasa's assassination in 1993, President Wijetunga again restricted the investigations to limited timeframes in order to avoid addressing the disappearances of Tamils in the early stages of the war.[137] Later investigations established under President Chandrika Kumaratunga produced more credible results, but they also remained political in nature.[138] The lack of government efforts to investigate disappearances after President Kumaratunga took office weakened the government's movement towards greater accountability.[139]

Trying to move beyond the limitations of past commissions and expand the scope of the investigations, the People's Alliance appointed three commissions in late 1994 to examine prior disappearances throughout the country.[140] The commissions again had a restricted mandate to investigate and document the involuntary removal or disappearance of persons from 1988 to 1994, during the reign of the previous United National Party regime.[141] Members of the

---

[135] *See* AMNESTY INT'L, *supra* note 7, at 13; *see also* U.S. DEPT. OF STATE, 1999, *supra* note 117, at 2440.

[136] *See* PRESIDENTIAL COMM'N OF INQUIRY INTO INVOLUNTARY REMOVAL OF PERSONS, FINAL REPORT 1 (Nov. 15, 1995) [hereinafter PRESIDENTIAL COMM'N].

[137] *See id; see also* DE SILVA, *supra* note 83, at 327.

[138] *See* Dias, *supra* note 97, at 3.

[139] *See Working Group 1999*, *supra* note 122, at 5, ¶17.

[140] *See* AMNESTY INT'L, SRI LANKA: JUSTICE WILL NOT BE DONE UNLESS COMMISSIONS OF INQUIRY INTO PAST VIOLATIONS ARE MADE PUBLIC, *at* http://web.amnesty.org/ai.nsf/print/ASA370221997?OpenDocument (Sept. 3, 1997).

[141] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2539. *See generally* COMM'N OF INQUIRY INTO INVOLUNTARY REMOVAL OR DISAPPEARANCE OF PERSONS IN THE WESTERN, SOUTHERN AND SABARAGAMUWA PROVINCES, FINAL REPORT (Sept. 1997) [hereinafter COMM'N OF INQUIRY].

commissions reported on disappearances and involuntary removals (abductions by non-state agents), identified those responsible, recommended whether legal proceedings should be pursued, and suggested relief and/or preventive measures to be undertaken.[142]

The commissions presented their final reports publicly in September 1997,[143] with 27,526 complaints analyzed and 16,742 cases of disappearances established.[144] The commissions also implicated hundreds of officers in relation to 3,861 cases, but prosecution of the alleged offenders has been slow, as the commission did not have a judicial mandate.[145]

Although the commissions were supposed to provide crucial evidence regarding the magnitude of the disappearance epidemic and spur litigation against those who perpetrated the crimes,[146] only a small number of convictions against perpetrators of human rights

---

[142] *See generally* AMNESTY INT'L, *supra* note 140.

[143] Interview with M.C.M. Iqbal, *supra* note 82; *see also Working Group 1999*, *supra* note 122, at 5, ¶16. The reports had limited accessibility and were printed primarily in English, with only recent Sinhala translations and no Tamil editions. *See id.*; *see also* interview with M.C.M. Iqbal, *supra* note 82.

[144] *Working Group 1999*, *supra* note 122, at 5, ¶15; Dias, *supra* note 97, at 4; *see* ASIAN HUM. RTS. COMM'N URGENT APPEAL, SRI LANKA: 16,742 DISAPPEARANCES ESTABLISHED! WHAT NEXT?, *at* http://www.ahrchk.net/ua/mainfile.php/1997/4 (Sept. 17, 1997) [hereinafter ASIAN HUM. RTS. COMM'N].

[145] Interview with T. Suntheralingham, Secretary, Human Rights Commission & Chairman, Presidential Commission on Disappearances for the North and East, Sri Lanka, in Colombo, Sri Lanka (May 2000); *see also* Interview with M.C.M. Iqbal, *supra* note 82. Set up in May 1998, a fourth commission investigated another 10,000 cases islandwide that the previous commissions were unable to investigate before their terms ended in May 1997. *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2539; *see also Working Group 1999*, *supra* note 122 at 5, ¶15. The commission again had a limited mandate and could not investigate cases of disappearance, which occurred after 1994, subsequent to the start of President Kumaratunga's period in office. U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2000: SRI LANKA, 2331 *available at* http://www.state.gov/g/drl/rls/hrrpt/2000/sa/704pf.htm (Feb. 23, 2001) [hereinafter U.S. DEPT. OF STATE, 2000]. Though disappearances occurring in previously controlled LTTE areas had not been adequately reported, the last commission had no authority to review such cases. Shamindra Ferdinando, *Presidential Commission to Submit Interim Report on Jaffna Disappearances*, THE ISLAND (Colombo), Mar. 31, 1999, at 2. After presentation to the President in August 2000, the fourth commission's report still is not publicly available. *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2539.

[146] U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2539. Under its mandate, the commission also had the authority to send cases to the Attorney General for possible prosecution. *Id.*; Interview with M.C.M. Iqbal, *supra* note 82; *see also* Dias, *supra* note 97, at 3.

abuses have followed.[147] Of the total 4,000 suspected perpetrators that the commissions identified, approximately 500 have been indicted and even fewer have been convicted.[148] This is largely because in cases initiated against suspects identified by the commissions, evidence for prosecution must come from investigations conducted by a special police unit, and not from evidence provided by the commissions.[149] The reports merely serve as a record of the disappeared, providing recommendations without ensuring justice.[150]

In November 1996, the Sri Lankan government established the Defence Ministry's Board of Investigation (BOI) in response to pressure from human rights organizations to establish an independent commission to specifically investigate the disappearances of those arrested by the army in Jaffna in mid-1996.[151] Subsequent to probing a total of 2,621 complaints, the BOI established 765 disappearance cases.[152]

The BOI never made its findings public, and only submitted its results to the government in March 1998, thereby making verification impossible.[153] The secrecy of the findings limited the initiation of legal action.[154] A number of annexes in the report include evidence to justify further inquiries by the police, yet the Attorney General filed charges with regard to only 14 deaths that were found to have occurred at the hands of the security forces.[155]

---

[147] *See* AMNESTY INT'L, *supra* note 140.

[148] *See* Dias, *supra* note 97, at 4.

[149] Interview with Yasantha Kodagoda, Senior State Counsel, Missing Persons Unit, Attorney General's Office, in Colombo, Sri Lanka (Mar. 2000).

[150] ASIAN HUM. RTS. COMM'N, *supra* note 144.

[151] *See* Ministry of Defence, Sri Lanka, Report of the Board of Investigation into Disappearances in Jaffna Peninsula 1 (Mar. 9, 1998), (unpublished manuscript, on file with author); *see also* AMNESTY INT'L, SRI LANKA: PROBE INTO "DISAPPEARANCES" MUST INSPIRE CONFIDENCE, *at* http://web.amnesty.org/ai.nsf/print/ASA370301999?OpenDocument (Dec. 7, 1999).

[152] *See generally* AMNESTY INT'L, *supra* note 151.

[153] *See* Dias, *supra* note 97, at 4; *see also* AMNESTY INT'L, *supra* note 140; *Working Group 1999*, *supra* note 122, at 6, ¶19.

[154] *See generally* AMNESTY INT'L, *supra* note 140.

[155] *See* Ministry of Defence, *supra* note 151, at 5; *see also Working Group 1999*, *supra* note 122, at 6, ¶19.

Having Defence officials investigate their own crimes weakened the BOI's mandate.[156] Paramanathan Selvarajah, the president of the Missing Persons Guardian Association (MPGA) in Jaffna, stated that the BOI's official findings "conceal[ed] the truth."[157] Although the MPGA gave details to the Ministry of Defence of 21 persons who disappeared from the town of Thenmaradchiin in northern Sri Lanka, including the details of the Sri Lanka Army soldiers involved in the incidents, no inquiries have been conducted.[158] The BOI also mistakenly told the families of two of the disappeared that their fates were not known, in spite of the exhumation and identification of their bodies at Chemmani, Jaffna in June 1999.[159]

Such blatant error and general refusal to investigate documented cases of disappearance call into question the integrity of the entire investigation conducted by the BOI.[160] Rather than working with civil society organizations to put to rest the fates of the disappeared, the BOI used its limited and politicized mandate to provide surface-level relief to families in Jaffna.[161] Consequently, the unwillingness to make the findings public and to initiate charges against those suspected of crimes weakens the government's credibility in the area of human rights and accountability.[162] The investigations, while vital in documenting past atrocities, serve as only one step in providing justice to those who disappeared.[163]

B. *Ineffectiveness of Preventive Measures*

Another vital step in creating an atmosphere of accountability comes from developing effective prevention tactics to ensure that dis-

---

[156] *See* Dias, *supra* note 97, at 6–7.

[157] Tamilnet, *MGPA Allege MoD Cover-Up* (Dec. 2, 1999) *at* http://www.tamilnet.com/reports99/12/0210.html. The MPGA is a non-governmental association in Jaffna. *See id.* Some did not take the findings of the BOI seriously since the complaints waged were against the very officials who were investigating them. Interview with M.C.M. Iqbal, *supra* note 82.

[158] *See* Tamilnet, *supra* note 157.

[159] *See generally* AMNESTY INT'L, *supra* note 151.

[160] *See id.*

[161] Interview with M.C.M. Iqbal, *supra* note 82.

[162] *See generally* AMNESTY INT'L, *supra* note 151.

[163] *See id.*

appearances do not occur.[164] While the Sri Lankan government has created some regulations and permanent institutions to curb the incidence of disappearances, such as the Human Rights Task Force (HRTF) of 1991[165] and Emergency Regulation 18(8), many practices have not been enforced.[166] The creation of a national Human Rights Commission in 1997, seen by many as a changing tide in overall attitudes towards accountability around disappearances, has suffered from weak prevention strategies and initiatives.[167]

Established by Parliamentary Act No. 21, the Human Rights Commission (HRC), with its 11 offices throughout the country, has an overall mandate "to inquire into, and investigate, complaints regarding procedures, with a view to ensuring compliance with the provisions of the Constitution relating to fundamental rights and to promoting respect for, and observance of, fundamental rights."[168] The HRC also advises the government on formulating legislation and administrative directives to protect and promote fundamental rights.[169] The body itself promotes and provides education on human rights.[170]

---

[164] *See* AMNESTY INT'L, *supra* note 7, at 108–09.

[165] *See* HUM. RTS. COMM'N OF SRI LANKA, 1997/98 ANNUAL REPORT 1 (Mar. 30, 1998). The HRTF served as "an independent body to monitor and observe fundamental rights of persons detained in custody under emergency regulations." *See* Ministry of Foreign Affairs, *supra* note 102. The ineffective work of the Task Force led it to be subsumed under the Human Rights Commission on June 30, 1997. *See id.*

[166] *See generally* Ministry of Foreign Affairs, *supra* note 102. Emergency Regulation 18(8) provides for the issuance of receipts to the next-of-kin of arrestees and for the surveillance of defaulters. *See id.*

[167] HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 2; *see also* LAW & SOC'Y TRUST, *supra* note 86, at 36.

[168] Human Rights Commission Act, No. 21 (1996) (Sri Lanka) [hereinafter HRC Act]. The HRC has offices in Ampara, Anuradhapura, Baddulla, Batticaloa, Colombo (Head Office), Jaffna, Kalmunai, Kandy, Matara, Trincomalee, and Vavuniya. *See* HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 4. Section 14 of the Act states that:

> The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or group of persons, investigate an allegation of the infringement or imminent infringement of a fundamental right of such person or groups of persons.

HRC Act, *supra*, § 14. Section 15(2) also provides for resolution through mediation or conciliation where appropriate. HRC Act, *supra*, § 15(2).

[169] HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 2.

[170] *See id.*

In addition, the HRC makes recommendations to the government to ensure that national laws and administrative practices remain consistent with international human rights norms and advises the government on whether it should become a party to other international human rights instruments/treaties.[171]

Set up as a permanent national institution, the HRC can "investigate any infringement or imminent infringement of a fundamental right declared and recognized by the Constitution and grant appropriate relief."[172] Many envisioned that the HRC would complement the judicial system in the protections of human rights, as its powers reach wider than that of the Supreme Court.[173]

To improve the image of the Sri Lankan security forces regarding respect for human rights, founders endowed the HRC with the additional authority to monitor detention centers through inspection procedures.[174] Under this implementation, when persons are arrested or detained under the PTA and the Emergency Regulations (ERs), the arresting authority must inform the HRC of the name and location of the person being held within 48 hours of the arrest or detention.[175] Those who willfully fail to inform the HRC of an arrest or detention may face imprisonment for no longer than one year and/or be fined.[176] Also, at the time of arrest or immediately thereafter, the arresting officer must issue a receipt acknowledging the arrest to a close relative.[177] Any child under 12 years of age and any woman arrested or

---

[171] *See id.*

[172] *See generally* Ministry of Foreign Affairs, *supra* note 102.

[173] *See generally id.* In an effort to try and lessen the burden placed on the Supreme Court, the HRC was given no time limits for the filing of complaints. *See generally id.*

[174] HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 2.

[175] HRC Act, *supra* note 168, § 28;*see also* Directions Issued by Her Excellency the President, Commander-in-Chief of the Armed Forces and Minister of Defence (July 31, 1997) [hereinafter Directions] (on file with author).

[176] HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 3.

[177] Directions, *supra* note 175. The Presidential Directions outline the procedures for lawful arrests:

> (3) At or about the time of arrest or if it is not possible in the circumstances, immediately thereafter as circumstances permit: (i) the person making the arrest or detention shall identify himself to the person arrested or any relative or friend of such person upon inquiry being made, by name and rank; (ii) every person arrested or detained shall be informed of the reason for the arrest; (iii) the person making the arrest or detention shall issue, to . . . any . . .

detained must be placed in the custody of the Women's Unit of the armed forces/police or in the custody of a female military/police officer.[178] Statements from those arrested or detained should be recorded in a language comprehended by the detainee.[179]

Security forces often ignore the crucial safeguards embedded in the ERs and HRC legislation, particularly the provision calling for an arrest receipt and the provision requiring that the security forces notify the HRC.[180] Despite these continuous abuses, the government did not fine or imprison any security personnel for failure to comply with the regulations in 2000 or in 2001.[181]

When the HRC became fully operational in 1997, it filled the dual role as an investigative and protective institution, ensuring governmental compliance with human rights norms.[182] Despite filling an important need, many human rights groups feel the HRC has not been pursuing its mandate effectively.[183] For example, its first annual report, covering the period from March 1997 to March 1998, has never been available to the public, limiting the awareness of the crimes detailed.[184] The HRC's existence is a testament to the government's improvement in shoring up mechanisms to address violations of human rights in Sri Lanka, but its inherent lack of necessary

---

> close relation . . . a document in such form as specified by the Secretary to the Ministry of the Minister in charge of the subject of Defence, acknowledging the fact of arrest. The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained shall also be specified. It shall be the duty of the holder of such document to return the same to, or produce the same before, the appropriate authority when the person so arrest or detained is released from custody.

Id.

[178] *See id.* Also, "[a] person of their choice should be allowed to accompany such child or woman to the place of questioning." *Id.*

[179] *Id.*

[180] *See* GAPS IN THE KRISHANTHY KUMARASAMY CASE, *supra* note 5, at ii, 3.

[181] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2537.

[182] HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 2.

[183] LAW & SOC'Y TRUST, *supra* note 86, at 32–33, 36. Many observers particularly and severely criticized the HRC for its inaction with regard to the revelations of the Chemmani graves. *See id.*

[184] *See Working Group 1999*, *supra* note 122, at 6, ¶21.

authority or political or financial support has enforced its weaknesses and offset its strengths.[185]

C. *Ending Impunity? The Attorney General: Indictments Without Convictions*

The problem of impunity for human rights offenders has been a persistent issue for those championing human rights in Sri Lanka.[186] Of the limited number of cases of extrajudicial execution or disappearance brought to trial, many take years and often fail to convict the offenders.[187] In recent Sri Lankan judicial history, only two cases demonstrate the government's new turn towards promoting human rights: the *Krishanthi Kumaraswamy* case of 1998 and the *Embilipitya* case of 1999.[188] In light of these precedents, the government must enhance the political will of the Attorney General's (AG's) office to ensure greater numbers of prosecutions and to provide justice for the victims of disappearances.

The AG's department in Sri Lanka has the legal right to conduct prosecutions in criminal courts and provides legal advice to law enforcement personnel during investigations.[189] The AG has no right to direct or conduct criminal investigations.[190] Special units, including the Missing Persons Commissions Unit (MPCU) established in 1999, operate within the AG's department to directly prosecute specific crimes.[191] Attorneys within the MPCU work with the Disappearance Investigative Unit (DIU), a specific unit within the police Criminal Investigation Department (CID).[192] Working primarily from the lists provided by the Presidential Commissions' findings, these two agencies work together to consider whether criminal proceedings should

---

[185] *See id.*

[186] *See* LAW & SOC'Y TRUST, *supra* note 86, at 5.

[187] *See id.*

[188] *See* Dias, *supra* note 97, at 6, 8.

[189] Interview with Yasantha Kodagoda, *supra* note 149.

[190] *See id.*

[191] *See id.* The AG and the Criminal Investigation Department have also established units to focus on torture complaints. *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2540.

[192] Interview with Yasantha Kodagoda, *supra* note 149; *see also Working Group 1999*, *supra* note 122, at 8, ¶34.

be initiated against security personnel suspected of involvement in extrajudicial activities.[193]

Entirely dependent on the work done by the DIU, the AG can only institute criminal proceedings based on evidence gathered by that unit rather than on the investigations done by the Commissions.[194] This controversial limitation placed on disappearance investigations developed from inadequate funding provided to the DIU by the Ministry of Defense.[195] The resulting lack of evidence in many cases forces the AG to delay and shelve many cases and allows the reign of impunity to continue.[196] Others argue that having the DIU, a unit in the police department, investigate itself counters the legitimacy of its findings and undermines the pursuit of justice.[197] Rather than bring disciplinary actions against the offenders, the lack of political will allows such culprits to continue working in their positions.[198]

In spite of these shortcomings, the AG's office has indicted security force personnel, including paramilitary organizations and anti-government elements, implicated by the Presidential Commission reports.[199] In 2000 the AG's office referred 348 files, involving 583

---

[193] Interview with Yasantha Kodagoda, *supra* note 149; *see also Working Group 1999*, *supra* note 122, at 8-9, ¶¶34, 35.

[194] Interview with Yasantha Kodagoda, *supra* note 149.

[195] *See* Letter from K. Balapatabendi, Secretary, President, Sri Lanka, to R.K. Chandrananada de Silva, Secretary, Ministry of Defence, Sri Lanka (Feb. 12, 1998) (on file with The Presidential Secretariat) [hereinafter Balapatabendi letter]. The letter is entitled "Facilities Required by the Special CID Unit Investigating into Disappearances Reported by the Disappearance Commissions." *See id.* (After securing an interview with Senior Superintendent of Police Lasantha De Silva in January 2000, he cancelled. He informed me that I had to petition the Ministry of Defense and go through the bureaucratic channels to secure permission for the interview.) The DIU, from its establishment in 1998, has suffered huge cuts in funding from the Ministry of Defence, forcing it to cut back its staff and weaken its ability to conduct investigations. *See id.* This becomes even more critical since the DIU is the sole source of evidence in disappearance cases. Interview with M.C.M. Iqbal, *supra* note 82.

[196] Interview with M.C.M. Iqbal, *supra* note 82. Officially, the AG's office claims that it is unable to have high conviction rates on account of the contradictory statements given by witnesses regarding the identity of abductors. *See* Dias, *supra* note 97, at 6.

[197] Interview with M.C.M. Iqbal, *supra* note 82; *see also* Dias, *supra* note 97, at 6.

[198] Interview with M.C.M. Iqbal, *supra* note 82; *see also* Dias, *supra* note 97, at 6.

[199] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2539. Officers in the armed forces who commit human rights offenses:

security force personnel, to the courts.[200] The Government, however, has still not pushed ahead with fully investigating and identifying all military personnel involved in crimes violating human rights.[201] In addition, many top officials have yet to be implicated for the crimes of their subordinates.[202] Though the convictions in certain cases pursued by the AG's office provide some optimism, the disproportionate number of convictions compared to the number of human rights violations, and the low ranks of the officers involved, demonstrates the superficiality of the remedies.[203]

A rare example of successful convictions of human rights offenders was demonstrated in the *Embilipitiya* case. In 1989, security forces abducted 24 schoolchildren and another individual from Embilipitiya Central College and nearby schools.[204] The 1992 Human Rights Task Force annual report implicated eight soldiers and two officers of the Sevena army camp at Embilipitiya in the abductions and recom-

---

> can be tried by either military or civil courts. In case of a summary trial before a military court, the punishment is of a disciplinary nature, such as reduction in rank, withholding of promotions or delay in promotions. In case of a court martial, the punishment can be imprisonment or discharge from service. If a prima facie case is established before a civil court, the officer has to be suspended from service.

Working Group 1999, *supra* note 122, at 8, ¶29.

[200] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2539.

[201] *See id.*

[202] Interview with M.C.M. Iqbal, *supra* note 82. "People who fail to prevent or punish their subordinates' illegal acts are liable under the doctrine of command responsibility. Accordingly, the doctrine does not address actions but omissions." Ilias Bantekas, *The Contemporary Law of Superior Responsibility*, 93 AM. J. INT'L L. 573, 575 (1999).

[203] *See Working Group 1999*, *supra* note 122, at 8, ¶30. The Ministry of Justice claims that a bottleneck in criminal proceedings slows the entire process of bringing perpetrators to justice. *See id.*

[204] *Question or the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial or Other Dependent Countries and Territories: Extrajudicial, Summary, or Arbitrary Executions: Report of the Special Rapporteur, Mr. Bacre Waly Ndiaye Submitted Pursuant to Commission of Human Rights Resolution 1997/61: Addendum: Visit to Sri Lanka*, at ch. 4, sec. A2 U.N. Doc. E/CD.4/1998/68/Add.2 (1998) [hereinafter Ndiaye Report]. *See generally* AMNESTY INT'L, SRI LANKA: JUDGMENT IN LANDMARK CASE—ANOTHER STEP AGAINST IMPUNITY, (Feb. 10, 1999) *at* http://web.amnesty.org/ai.nsf/print/ASA370051999?OpenDocument.

mended a full-scale investigation.[205] The CID began investigations that same year and gathered further evidence against the abductors.[206]

The AG's case, which opened in January 1996, ended three years later in February 1999.[207] The landmark judgment sentenced six members of the security forces, including one brigadier and one principal of the high school, to ten years in prison.[208] The High Court of Ratnapura found all seven guilty of abduction with the intent to commit murder and wrongful confinement.[209]

The *Embilipitiya* case crucially demonstrates the ability of the judiciary to provide justice through adjudication. Nevertheless, greater numbers of cases will arrive before the courts only through structural and procedural changes regarding the methods of collection and delivery of evidence to the AG.[210] The institutions entrusted with such an important task must also be diversified to provide greater accountability between the actors.[211]

The *Kumarasamy* judgment demonstrates only a vague improvement in accountability around human rights violations. In 1996 a 17 year old student, Krishanthy Kumaraswamy, "disappeared" after she was raped and murdered by several members of the armed forces on duty at the Chemmani checkpoint.[212] Family and friends who went in search of her were also killed.[213] This case starkly illustrates the sever-

---

[205] *See* Ndiaye Report, *supra* note 204, at ch. 4, sec. A2. *See generally* AMNESTY INT'L, *supra* note 204.

[206] *See* Ndiaye Report, *supra* note 204, at ch. 4, sec. A2.

[207] *See id.* *See generally* AMNESTY INT'L, *supra* note 204.

[208] *See generally* AMNESTY INT'L, *supra* note 204.

[209] *See* Dias, *supra* note 97, at 6. *See generally* AMNESTY INT'L, *supra* note 204. In Sri Lanka, since there is no offense termed "causing disappearance," cases of disappearance are tried under the offenses of "[k]idnapping or [a]bduction . . . in order to secretly or wrongfully confine and/or murder or may be so disposed of as to be put in danger of being murdered." Dias, *supra* note 97, at 1.

[210] ASIAN HUM. RTS. COMM'N, SRI LANKA: STATEMENT ON EMBILIPITIYA CASE, BRAVE JUDGEMENT IN ONE CASE OF CHILDREN DISAPPEARANCES, THOUSANDS STILL NOT INVESTIGATED OR PROSECUTED, *at* http://www.ahrchk.net/hrsolid/mainfile.php/1999vol09no04/851 (Apr. 4, 1999).

[211] *See id.*

[212] *See* GAPS IN THE KRISHANTHY KUMARASAMY CASE, *supra* note 5, at ii.

[213] *See id.*

ity of disappearances and extrajudicial killings in Jaffna and the dire necessity for proper investigations and convictions.[214]

By 1998, the court sentenced six soldiers and one reserve police officer to death in the *Kumaraswamy* trial.[215] This case demonstrated "the first time members of the armed forces and the police . . . [were] given maximum sentences for grave human rights violations."[216] In making his final judgment at the High Court in Colombo, Justice Gamini Abeyratne stated:

> [i]n view of the strong evidence . . . deterrent punishment had to be imposed. The court cannot ignore the barbaric and brutal assault made on a schoolgirl . . . . [T]he accused held responsible positions in the Armed Forces and Police, but they attacked this young girl like a pack of savage animals.[217]

The weaknesses in the case, however, detract from its gains.[218] Kumarasamy's murder occurred in the "context of indiscipline and lawlessness sanctioned . . . by the Army top brass."[219] Rather than addressing the structural problems and complacency of the military to deal with the large numbers of atrocities in the north, a single trial served as the sole remedy to tackle the persistent problems of military rule.[220]

During the sentencing phase of the *Kumarasamy* case, another case emerged when former Lance Corporal Somaratne Rajapakse, one of the convicted, revealed knowledge of mass graves at Chemmani containing bodies of up to 400 persons killed by security forces in 1996.[221] Five others substantiated claims of mass graves in the

---

[214] *See id.*; *see also* LAW & SOC'Y TRUST, *supra* note 86, at 127. The perpetrators also killed Kumaraswamy's mother, brother, and one neighbor and raped and murdered another individual. *See* GAPS IN THE KRISHANTHY KUMARASAMY CASE, *supra* note 5, at 7.

[215] *See* LAW & SOC'Y TRUST, *supra* note 86, at 31; *see also* U.S. DEPT. OF STATE, 1999, *supra* note 117, at 2437.

[216] *See* LAW & SOC'Y TRUST, *supra* note 86, at 127.

[217] GAPS IN THE KRISHANTHY KUMARASAMY CASE, *supra* note 5, at 7.

[218] *See id.*

[219] *See id.*

[220] *See id.*

[221] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2537; *see also* LAW & SOC'Y TRUST, *supra* note 86, at 20.

Chemmani area, where they alleged to have buried between 120 and 140 bodies on superior orders.[222] In 1999, almost a year after Rajapakse made his revelations, exhumations started, in the presence of international observers and forensic experts, yielding 15 skeletons.[223] After further forensic analysis, the experts presented the evidence in December 1999 to the Jaffna magistrate, demonstrating that ten of the remains showed signs of trauma and assault, which resulted in death.[224] By the end of 2001, a total of 13 of the original 15 bodies still had not been identified.[225]

Lance Corporal Rajapakse, along with others convicted in the Kumarasamy case, implicated 20 security personnel for the killings.[226] Yet by March 2001, authorities arrested only five suspects and issued another arrest order for a suspect who had fled.[227] By June, authorities released on bail one suspect not charged with murder.[228]

Disappearances continued in 2000 to 2001 in the course of military offenses in the north and east, albeit on a smaller scale than in previous years.[229] In December 2000, eight Tamil civilians went missing in December 2000 in Mirusuvil after arrest and torture by the Sri Lankan Army.[230] Two soldiers identified as perpetrators admitted to the killings, while authorities later arrested one commissioned officer

---

[222] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2537.

[223] *See id.*; *see also Chemmani Grave Probe Resumed*, TAMIL TIMES, July 15, 1999, at 4.

[224] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2537.

[225] *See id.*

[226] *See id.*

[227] *See id.*

[228] *See id.* The case is still pending, delayed by fighting near Jaffna that displaced key witnesses and prevented them from testifying. *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2537. The current cessation in the fighting will hopefully allow the trial to proceed. *See* Priyath Liyanage, *Analysis: Sri Lanka's Fragile Ceasefire*, BBC News Online, (Feb. 21, 2001) *at* http://news.bbc.co.uk/hi/english/world/south_asia/newsid_1834000/1834788.stm.

[229] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2538–39. The impossibility of listing exact numbers of the disappeared stems from the inability to receive reliable information on security force operations due to the limited access to the northern and eastern parts of the country. *Id.* From January through September 2001, the HRC received 44 reports of disappearances in Vavuniya alone, although the reports have not yet been confirmed. *See id.*

[230] *See id.*

and six other soldiers.[231] By the end of 2001, the government ordered an official inquiry and withheld the salaries of the soldiers.[232] Transferred to Anuradhapura Magistrate's Court, the case has not yet come to trial.[233]

D. *Discriminatory Compensation*

In 1995 the government enacted the Registration of Death (Temporary Provisions) Act No. 2 to expedite the process of issuing death certificates in cases of missing persons who are presumed dead and to therefore allow for compensation payments to families.[234] Next of kin of individuals killed during civil disturbances (i.e. violence or terrorist activity) must wait only one year before applying for registration of the disappearance.[235] On the other hand, the Rehabilitation of Persons, Properties and Industries Authority provides funds only after the disappearance is confirmed through the issuance of a death certificate.[236] Relatives of missing persons named by the Presidential Commissions have an easier time getting certificates.[237] Between 1995 and 1999, with the issuance of more than 15,000 death certificates, more than 12,000 families received compensation.[238]

Though the process of legally obtaining death certificates has been accelerated, large-scale discrimination exists in the granting of compensation between regions and persons.[239] Disparities in compensation awards highlight the discrimination, where relatives of a disap-

---

[231] *See id.*

[232] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2538–39.

[233] *See id.*

[234] *See Working Group 1999*, *supra* note 122, at 3-4, ¶8.

[235] *See For the Record 1998: The UN Human Rights System 3, Sri Lanka*, Human Rights Internet (HRI), *at* http://www.hri.ca/fortherecord1998/vol3/srilankatr.htm (last visited Dec. 6, 2002) [hereinafter *For the Record 1998*].

[236] Interview with M.C.M. Iqbal, *supra* note 82; *see also Working Group 1999*, *supra* note 122, at 3-4, ¶8. "The applicant is required to submit an affidavit along with the application setting out the grounds for his or her belief that the person in respect of whom a death certificate is sought has been missing for more than one year and that he or she truly believes such a person to be dead." *Working Group 1999*, *supra* note 122, at 12, ¶52.

[237] *See Working Group 1999*, *supra* note 122, at 12, ¶52.

[238] Interview with M.C.M. Iqbal, *supra* note 82; *see also Working Group 1999*, *supra* note 122, at 3-4, ¶8.

[239] *See Working Group 1999*, *supra* note 122, at 12, ¶53.

peared public civil servant receive 150,000 rupees (approximately $2,400), while all others receive only 50,000 rupees (approximately $800).[240]

Though some of the measures undertaken by the Government to deal with disappearances illustrate a positive path toward greater accountability, the infrequency of convictions demonstrate how insufficient such measures are. Seven convictions in the *Embilipitya* case, six convictions from the *Krishanthi Kumaraswamy* case, and four convictions for abduction perpetrated by 88 low ranking security force personnel encompass the totality of justice for the tens of thousands of people who have disappeared.[241] Politicization of the Presidential Commissions, weaknesses of the HRC, and discriminatory compensation policies have all limited accountability for human rights violations. Without the political will to convict the guilty participants and strengthen the institutions monitoring violations, the reign of impunity will never be challenged.[242]

IV. Recommendations for Ending the Disappearance Cycle

Although current measures undertaken by the Sri Lankan government have demonstrated a greater commitment to human rights, the new measures only superficially affect the deep-rooted problem.[243] The UNWGEID, in its 1999 visit to Sri Lanka, outlined the weaknesses of the government's efforts and provided recommendations to combat the disappearance phenomenon.[244] Procedures must be adopted that not only meet international human rights norms, but that are specifically designed for the Sri Lankan context, ensuring that the rule of law counters the reign of impunity within the country.

In creating a model process to combat disappearances, the three strategies of prevention, investigation, and countering impunity must

---

[240] *Id.*

[241] *See* U.S. Dept. of State, 2001, *supra* note 120, at 2536. Some argue that the AG has refrained from indicting high-level officials because of its connection with the DIU. Interview with M.C.M. Iqbal, *supra* note 82.

[242] Amnesty Int'l, *supra* note 204.

[243] *See* Amnesty Int'l, *supra* note 7, at 108–09.

[244] *See id.* The UNWGEID arrived for a third time in Sri Lanka in late October 1999, after previous visits in 1991 and 1992. *See id.* In the 1991 visit, the UNWGEID transmitted 4,932 cases to the Sri Lankan government. *Id.* In total, the UNWGEID has documented 12,258 cases of disappearance in Sri Lanka. *Id.*

be strengthened.[245] The first leg of prevention will deal with the training of armed forces and the provision of legal safeguards to ensure documented arrest and detention. The second leg of investigation will provide un-politicized commissions and investigations by police to provide greater evidence in support of cases of disappearance. The third leg will implement an effective system to combat the climate of impunity, to allow greater accountability for actions undertaken by security forces, and to provide justice through standardized trials in cases of disappearance.

A. *Prevention Procedures*

The first step in such a model process involves the prevention of disappearances and other violations of human rights.[246] Eradicating disappearances is a matter of political will, a duty which the Sri Lankan government has in maintaining public order.[247] Some key areas of prevention include effective training of security forces, safeguards on arrest and detention, and norm internalization.

The Sri Lankan government must provide comprehensive training to security forces in human rights and humanitarian norms in order to ensure non-abuse.[248] Greater supervision of troop activities by those adequately trained in human rights norms will also encourage the armed forces to be more attentive to their human rights obliga-

---

[245] *See* AMNESTY INT'L, *supra* note 7, at 108–09.

[246] *See id.* at 108. Prevention of human rights abuses is obligatory through international human rights and humanitarian law and reinforced in judgments of international judicial bodies. *See id.* Prevention duties are outlined specifically in Article 1 of the Declaration on the Protection of All Persons from Enforced Disappearance, Principles 1 through 8 of the Principles on the Effective Protection and Investigation of Extra-Legal, Arbitrary and Summary Executions, and in judgments from the InterAmerican Court of Human Rights and the UN Human Rights Committee. *See id.*; *Declaration on Enforced Disappearance, supra* note 47, art. 1; *Principles on the Effective Protection and Investigation of Extra-Legal, Arbitrary and Summary Executions*, E.S.C. Res. 1989/65, U.N. ESCOR, U.N. Doc. E/65/89 (1989).

[247] *See* AMNESTY INT'L, *supra* note 7, at 108.

[248] *See id.* at 136.

tions under international law.[249] Effective control by superiors should help guarantee that disappearances do not occur.[250]

Security forces should also be trained to understand that they have a right to disobey or refuse to participate in activities that violate norms of human rights and a duty to report such breaches in conduct.[251] This encourages accountability within the ranks and maintains allegiance to human rights in official operations. Overall restraints on the use of force should also be emphasized, in order to limit the commission human rights abuses in the field.[252]

In addition to the lack of adequate training for security forces, frequent disregard for safeguards to prevent arbitrary arrests, particularly the legal obligation to inform the HRC of arrests and detentions, has persisted in Sri Lanka.[253] The government must increase accountability to the HRC's notification requirement during times of arrest.[254] Penalties already guaranteed under the HRC's mandate, ranging in severity from fines and/or imprisonment for not more than one year after trial, must be enforced and possibly elevated for those soldiers and officers who disregard this essential rule.[255] A system must be created, through effective training and human rights norm internalization, where compliance to the law becomes the norm and not the exception.

Receipts of arrest, already guaranteed under the HRC's mandate, must be standardized.[256] Relatives of those arrested and/or detained must be notified to ensure an additional level of accountability if human rights violations occur.[257] Penalties should be enforced against

---

[249] *See* U.S. DEPT. OF STATE, 2001, *supra* note 120, at 2536, 2540–42. The HRC has conducted some training courses on human rights and humanitarian law for the army. *See Working Group 1999*, *supra* note 122, at 13, ¶58.

[250] *See* AMNESTY INT'L, *supra* note 7, at 113. Such a duty, called "chain-of-command control," entails clear regulations and procedures regarding detention and arrest, ensures such rules are followed, and provides for effective investigation procedures for breaches and adequate punishment through effective supervision. *Id.*

[251] *See id.* at 113.

[252] *See id.* at 114.

[253] *See Working Group 1999*, *supra* note 122, at 14, ¶62.

[254] *See id.* at 15, ¶63(f).

[255] *See* HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 3.

[256] *See Working Group 1999*, *supra* note 122, at 13, ¶58

[257] *See id.* at 10, ¶42.

those who disregard such essential safeguards, and places of detention should be regularly inspected by the HRC and other human rights monitors to ensure that disappearances and incidents of torture are not concealed.[258]

Most importantly, basic human rights norms and treaties must be made widely known in order to become effective.[259] All members of civil society should be made aware of the rights they are accorded and the protections they are guaranteed. The principles should be translated in all languages spoken in Sri Lanka and embedded into government-sponsored teaching and discussion programs.[260] Only when such norms become entrenched within Sri Lanka's rule of law and culture will the frequency of disappearances decrease.[261]

B. *Investigative Procedures*

The second leg of an improved Sri Lankan model to prevent and combat disappearances involves the effective investigation of all alleged cases of disappearance.[262] Investigations will uncover information concealed by the perpetrators, help those victims still alive, and/or provide crucial evidence to initiate charges against the offenders.[263]

Investigating bodies must be impartial, have necessary powers and resources, be staffed by professionally competent personnel, and be protected from intimidation.[264] The Sri Lankan Attorney General's lack of independence to conduct thorough case investigations must

---

[258] *See* AMNESTY INT'L, *supra* note 7, at 132. Officials involved in a disappearance sometimes cover up its occurrence by claiming that the prisoner has been released. *See id.* Prisoners should be released publicly to organizations and individuals who can verify their discharge. *See id.* Officials should also distribute certificates of release. *See id.*

[259] *See id. at* 134. Lack of knowledge of the law by law enforcement officials is one reason why the legal requirement to inform the HRC of arrests and detentions has not been followed. *See Working Group 1999*, *supra* note 122, at 10–11, ¶45.

[260] *See Working Group 1999*, *supra* note 122, at 11, ¶¶48,49.

[261] *See* HUM. RTS. COMM'N OF SRI LANKA, *supra* note 165, at 7.

[262] *See* AMNESTY INT'L, *supra* note 7, at 139.

[263] *See id.* Legal obligations to conduct prompt and impartial investigations emerge from Article 13 of the UN Declaration on Enforced Disappearance, principles 9–17 of the Principles on Extra-Legal, Arbitrary and Summary Executions, and the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. *Id.* at 139.

[264] *See id.* at 142.

be remedied.[265] The Disappearance Investigative Unit of the Police Department should not be the sole authority responsible for providing crucial evidence to initiate charges against human rights offenders, some of whom are within the department's own ranks.[266] Branches of the AG should possess investigatory powers when looking into cases of disappearance, separating the suspected violators from the investigations. At a minimum, the DIU should be fully staffed and funded by the government to carry out their investigations and provide evidence to the AG's cases in a competent and effective manner.[267]

Commissions of inquiry and national human rights commissions should be established to investigate past patterns of disappearance as well as individual cases.[268] They should be able to make recommendations for criminal prosecution, consider institutional changes necessary to prevent the disappearance phenomenon, and aid in compensation and other forms of redress for family members.[269]

Though limited by the set dates of disappearances they could investigate, the Presidential Commissions and the Board of Investigation in Sri Lanka served as an important first step in addressing the disappearance phenomenon.[270] The government must now establish a permanent disappearance commission, with an expanded mandate to investigate disappearances as they occur.[271] At a minimum, a body should be empowered to investigate disappearances and implicate perpetrators post-1995.[272]

The present government must be willing to control disappearances as they occur rather than blame prior regimes for the continuing problem. Expanding the commissions' mandates and creating a

---

[265] Interview with M.C.M. Iqbal, *supra* note 82.

[266] *See id.*

[267] *See* Balapatabendi letter, *supra* note 195.

[268] *See* AMNESTY INT'L, *supra* note 7, at 150.

[269] *See id.* at 150, 170.

[270] *See* Ministry of Defence, *supra* note 151, at 1; *see also Working Group 1999*, *supra* note 122, at 5, ¶15.

[271] ASIAN HUM. RTS. COMM'N, SRI LANKA: THOUSANDS OF DISAPPEARANCES ESTABLISHED–TRUTH COMM'N URGED (Aug. 14, 2001), *at* http://www.ahrchk.net/hrsolid/mainfile.php/1997vol07no05/315/.

[272] *See Working Group 1999*, *supra* note 122, at 5, ¶17.

permanent commission will institutionalize investigations and provide long-term accountability.

C. *Tackling Impunity*

Under the third leg of a model for reform, the Sri Lankan government must ensure that effective judicial remedies exist for family members of the disappeared, so as to end the reign of impunity for perpetrators of such crimes.[273] Impunity is the root cause of the prevalence of disappearances and one of the major obstacles to discovering the truth in past cases.[274]

Legal and constitutional changes in Sri Lanka should be initiated to provide greater accountability for disappearances.[275] The act of enforced disappearance should be made a separate offense under Sri Lankan criminal law, "punishable by appropriate penalties as stipulated in [A]rticle 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearances."[276] This will classify the phenomenon as a crime under law and allow for more efficient and greater numbers of prosecutions.

The prohibition against enforced disappearance should also become a fundamental right in the Sri Lankan Constitution, which allows a petition to the Supreme Court under Article 13 irrespective of whether the disappeared person is presumed alive or dead.[277] This measure will allow more efficient prosecutions, as proof of death will no longer be an impediment to initiating charges against the perpetrators, and hence provide faster relief for families.

The Prevention of Terrorism Act (PTA) and the Emergency Regulations (ERs), main factors contributing to the steady level of disappearances, should either be either abolished or modified to render them consistent with international human rights norms.[278] The

---

[273] *See* Roht-Arriaza, *supra* note 130, at 6–8.

[274] *Working Group 2000*, *supra* note 76, at 3.

[275] *See Working Group 1999*, *supra* note 122, at 14, ¶62.

[276] *Id.* at 14, ¶63(c); *Declaration on Enforced Disappearance*, *supra* note 47, art. 1; *see also* AMNESTY INT'L, *supra* note 7, at 110. While Article 4 clearly obligates states to follow procedures that address impunity, very few countries have amended their criminal laws to make acts of enforced disappearance punishable by appropriate penalties. *Declaration on Enforced Disappearance*, *supra* note 47; *Working Group 2000*, *supra* note 76, at 3, 26-27.

[277] *See Working Group 1999*, *supra* note 122, at 15, ¶63(i).

[278] *See id.*

provisions of the PTA should be revised to follow normal Sri Lankan criminal procedure by allowing an arrested suspect to be brought before a judicial officer within 24 hours, thus reducing the likelihood of abuse by arresting authorities.[279]

There should also be legal limits on the ability of the Sri Lankan government to declare emergency rule, which subsequently degrades fundamental rights such as personal liberty and freedom from arbitrary arrest and detention guaranteed under the Constitution.[280] The PTA, the PSO, and the ERs must be repealed or amended to limit the government's emergency powers during times of war and peace. Such limits are essential under the current ceasefire to ensure the country's steady return to the rule of law through the peace process. The enactment and effective implementation of such measures will prevent acts of enforced disappearance in the future.[281]

The government also must ensure an increase in prosecutions and convictions of offenders.[282] Prior efforts to ensure steady prosecutions have failed, with low numbers of convictions and even promotions of suspected perpetrators, despite expanded criminal investigations by the DIU and the AG.[283] The government must hasten efforts to bring suspects to justice by empowering the Missing Persons Commissions Unit of the AG's office or another independent body to indict suspected perpetrators.[284] More thorough and less politicized investigations by the DIU of the Police Department and the establishment of permanent commissions will provide solid evidence by which prosecutions may begin and convictions may be sought.

Overall, the judicial process must be prompt, impartial, effective, fair, and open.[285] Sri Lanka must comply with Article 18 of the Decla-

---

[279] *See id; see also* PTA, *supra* note 107.

[280] IMTIAZ OMAR, RIGHTS, EMERGENCIES AND JUDICIAL REVIEW 57 (1996).

[281] *See* Roht-Arriaza, *supra* note 130, at 7.

[282] *See* Goldstone, *supra* note 12, at 609. Only after lasting and definite peace should the government perhaps consider establishing a truth commission to deal with impunity and provide a healing process for those directly affected by the war. *See id.* A revival of hostilities would eliminate any gains such a commission might achieve. *See id.*

[283] *See Working Group 1999*, *supra* note 122, at 9, ¶35.

[284] *See id.* at 9, 14, ¶¶35, 63(b).

[285] *See* AMNESTY INT'L, *supra* note 7, at 160. Further, the trials should be in civilian courts, staffed with diligent prosecutors and sufficient resources. *See id.* Family members and victims should also be provided adequate representation. *See id.*

ration on the Protection of All Persons from Enforced and Involuntary Disappearance and must not pass any amnesty law or similar provision to exempt perpetrators from criminal proceedings or sanctions.[286] In disappearance cases, statutes of limitations should not apply, the defense of superior orders should not be a permissible defense, and the full scope of liability for prosecution and universal jurisdiction should apply.[287] Sri Lanka must take full responsibility for past and present disappearance cases in an effort to provide justice and accountability for those who lost their lives through senseless acts.[288]

CONCLUSION

> *What we are doing is trying to give a voice to the voiceless, so that their stories can come out.*[289]

Though the Sri Lankan government has taken small steps to tackle the disappearance epidemic plaguing the nation, the government has not ensured the strength and efficacy of such institutions in the long term.[290] Legitimate and comprehensive commissions of inquiry into past abuses under former regimes must coexist with those investigating and exposing present abuses. The Presidential Commissions exposed crimes from the past within a specified, politically determined time period. The Board of Investigation for Jaffna, which focused only on 1996, revealed the continuing problems plaguing the security forces, but also only on a limited scale. The Human Rights Commission and the Attorney General's office, with its unenforceable mandates, provides ineffective remedies and prevention strategies for combating disappearances.

---

[286] *Declaration on Enforced Disappearance, supra* note 47, art. 18; *Working Group 2000, supra* note 76, at 26, ¶124.

[287] *See* AMNESTY INT'L, *supra* note 7, at 162. Universal jurisdiction allows for states other than those where the crime was committed to implement criminal proceedings. *See id.* "Liability to prosecution should be extended fully over space, over time, and over the full range of people responsible." *Id.*

[288] *See id.* at 108.

[289] *See* Macan-Markar, *supra* note 2, at 15 (*quoting* Doctor William Haguland of Physicians for Human Rights).

[290] *See* Balapatabendi letter, *supra* note 195.

The need for effective prevention, investigation, and judicial strategies to bring perpetrators to justice remains crucial to curbing the disappearance phenomenon. As the LTTE transforms into a political organization through the peace process, the need for justice and reconciliation remains vital.[291] Only by ingraining notions of accountability and providing justice for victims in Sri Lanka will the cycle of disappearances finally end.

[291] *See* BBC New Online, *supra* note 125.