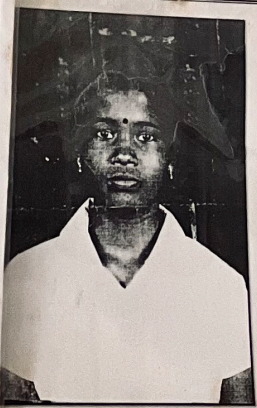


# STILL NO

# ANSWERS

An update on the rights of victims of enforced disappearances in Sri Lanka



கந்தாரணியம்  
மறோஜினி



ஹரிதாசன்-திலக்சன்  
முத்துக்குமாரிநம்பு.



சுந்தர்,  
மேல்பாடி,  
பச்சைமலையு,  
தம்பினி.



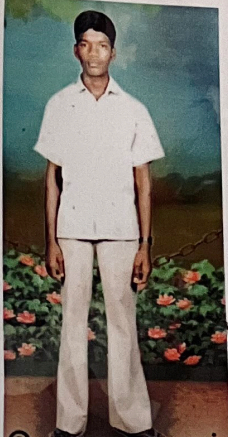
கந்தையா திருபா



அழகன் கலைக்கி



மனோகரன் ரணிலுஜன்



இ. மொகன்ராஜ்

பிறப்பு- 1992.06.07  
காணாமல்போன நாள்- 2009.02.20



மரியசீலன்  
மேரி நிராந்தி



பாங்குமேலையன்  
- கிருசிணாதிபதி



சுவசிதம்பரம் தீபன்  
(சிறுநீர்வெந்தன்)



இரத்தினராசா கதிஸ்

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←  *Cover Photo: Photos of family members disappeared during Sri Lanka's conflict displayed at the victims' protest site in Mullaitivu.*

**All photos by Ruvín de Silva and Thyagi Ruwanpathirana for Amnesty International 2022**





A mother in  
Vavuniya showing  
a photo of her  
disappeared son

***“The situation of cases of disappearance is extremely vulnerable... The government’s attitude is that there were no disappearances.”***

- Sandya Eknaligoda, wife of disappeared journalist Prageeth Eknaligoda<sup>1</sup>

<sup>1</sup> Interview with Amnesty International in August 2021



# 1. INTRODUCTION

***“It’s like we’ve given our children to the alligators. What happened to our kids who were alive at the point we handed them over to government custody?”***

– Victim family member from Kilinochchi<sup>2</sup>

According to cases outstanding before the UN Working Group on Enforced or Involuntary Disappearances in 2021, Sri Lanka has the second largest number of enforced disappearances in the world, recorded at 6,259 — second only to Iraq.<sup>3</sup> Amnesty International estimates that there have been at least 60,000 and as many as 100,000 cases of enforced disappearance in Sri Lanka since the 1980s.<sup>4</sup>

In February 2022, families of the disappeared in northern Sri Lanka marked five years of continuous protests demanding truth and justice.<sup>5</sup> Over the years and despite countless domestic mechanisms, the Sri Lankan authorities have repeatedly failed to provide them answers and justice for what constitutes a crime under international law and a serious international human rights violation.

***“We know what happens if they joined the [LTTE] movement. In this case, they were handed over to the Sri Lankan Army who said they will make inquiries and pardon them. But now we can’t find them anymore, so we’re suspicious of the state.”***

– Victim family member from Mullaitivu<sup>6</sup>

***“Even if you’ve killed him, tell us. We will decide what happens next.”***

– Victim family member from Mullaitivu<sup>7</sup>

The Sri Lankan government has been keen to show the UN Office of the High Commissioner for Human Rights (OHCHR) and UN Human Rights Council (UNHRC) member states<sup>8</sup> that domestic mechanisms such as the Office on Missing Persons (OMP) are reliable, functional, willing and are dedicated to addressing international concerns and

commitments along the lines of victims’ rights to truth, justice and reparations. Research conducted by Amnesty International shows that this is an inaccurate depiction of ground realities: of the State’s attitude and response to the issues of victims of enforced disappearances.

Victims of human rights violations in the context of the war and its aftermath, bravely continuing their quest for answers, as well as organisations working on enforced disappearances, now face a new dimension of rights violations. This time the state actors are interfering with their freedom of peaceful assembly, expression and association as well as their right to liberty and security of person, including the protection against arbitrary detention. This research piece hopes to shed light on this deteriorating human rights situation, particularly with regards to Sri Lankan authorities’ response and approach to the rights of families of the forcibly disappeared in Sri Lanka.

<sup>2</sup> Interview with Amnesty International in August 2021

<sup>3</sup> Report of the UN Working Group on Enforced or Involuntary Disappearances, August 2021, A/HRC/48/57, <https://undocs.org/A/HRC/48/57>

<sup>4</sup> *Sri Lanka – Victims of disappearance cannot wait any longer for justice*, Amnesty International, April 2017, <https://www.amnesty.org/en/latest/news/2017/04/sri-lanka-victims-of-disappearance-cannot-wait-any-longer-for-justice/>

<sup>5</sup> *5 years and still no answers – Tamil families of disappeared march despite rains in Kilinochchi*, Tamil Guardian YouTube Channel, February 2022, <https://www.youtube.com/watch?v=u1hU2DAP0VM>

<sup>6</sup> Interview with Amnesty International in February 2022

<sup>7</sup> Interview with Amnesty International in February 2022

<sup>8</sup> See for e.g., Foreign Minister Prof. G.L. Peiris Briefs Diplomatic Corps on Current Initiatives, Ministry of Foreign Affairs, 27 January 2022, <https://mfa.gov.lk/fm-briefs-dpl/> and *Sri Lanka foreign minister briefs Delhi-based missions ahead of UNHRC session*, Economy Next, 23 February 2022, <https://economynext.com/sri-lanka-foreign-minister-briefs-delhi-based-missions-ahead-of-unhrc-session-90734/>





*A photo of  
Yogarasa Amalan  
from Kilinochchi,  
last seen in the  
custody of the Sri  
Lankan armed  
forces in 2009*







A victim family member from Mullaitivu points to a loved one in a photo of young men in government custody in a local Tamil newspaper.



பிராந்திய பதிப்பு

# VIRAKESARI

# வீரகேசரி

THE PREMIER TAMIL DAILY IN SRI LANKA

Registered as a Newspaper at the G.P.O No. QD/47/News2009

## வடக்கில் நேர்மையான தேர்தலுக்கான சர்வதேசம் அமுத்தம் கொடுக்க வேண்டும்

சர்வதேசம் அமுத்தம் கொடுக்க வேண்டும் என்றும் அவர் கோரினார்.  
(11 ஆம் பக்கம் பார்க்க)

**தாமல் மீது முகாமில் சேறு வீசிய பள்ளிவை**  
**அரசாங்கம் மறுப்பு**  
ஜனாதிபதி மலிந்த ராஜபக்ஷவின் மகன் நாமல் ராஜபக்ஷ மீது அண்மையில் வவுனியா நவன்புரி முகாமில் சேறு வீசப்பட்டதாக வங்கா நியூஸ் என்ற செய்தி மூலமாக வெளிவந்த செய்தி முற்றாக நிராகரிக்கின்றோம் என்று அமைச்சர் லக்ஷ்மன் யாப் பேலாத்தன் தெரிவித்தார். அந் காலம் (11 ஆம் பக்கம் பார்க்க)



வவுனியாவில் விசேட முகாமில் தங்கவைக்கப்பட்டுள்ள சரணடைந்த புலிகள் இயக்க உறுப்பினர்களின் ஒரு பகுதியினரை மனித உரிமைகள் குழுவின் தீர்ப்பு முன்மீட்டல் குழுவினர் தேற்று முன்தினம் சென்ற பார்வையிட்ட போது எடுத்த புகைப்படம்.





## 1.1 METHODOLOGY

This publication is based on primary and secondary research conducted by Amnesty International. As primary research, Amnesty International conducted 28 interviews, both in-person and through secure remote communications, with victim families predominantly from the Northern province. One victim family member from the south was interviewed along with one southern civil society member. The interviews were conducted between July 2021 - February 2022. Of the 28 individuals interviewed, 25 individuals are women, and 25 individuals are Tamils. District-level breakdown of northern interviewees is as follows: Jaffna (1 individual), Kilinochchi (11 individuals), Mullaitivu (6 individuals), Vavuniya (7 individuals). The remaining 3 interviewees are from the south. Due to fears of reprisals and retaliation, some individuals opted not to be named. Others consented to be named as they felt they are already exposed. Our attempts to reach the Office on Missing Persons for a meeting proved futile. Amnesty International would like to acknowledge and thank the interviewees for their relentless work in pursuit of justice for the forcibly disappeared in Sri Lanka, braving security risks and speaking with us, and for trusting us with their stories. Amnesty International also relied on secondary sources including reports of local and international organisations and media reports.



*A mother in Vavuniya holds up a photo of her missing son*







*Theventhiran Ratheeswaran,  
last seen in June 2008. His  
father believes he is alive  
somewhere*





## 2. A CLIMATE OF FEAR

Amnesty International observed that the space available for families of the disappeared to continue their pursuit for truth and justice is increasingly shrinking owing to intimidation tactics by the state. The seeming return of ‘white van’ style arrests in different parts of the country, harassment and intimidation of victim families by law enforcement officers through unannounced visits, intimidating phone calls, surveillance and taking photographs during protests are to name a few. Additionally, the state security apparatus as of late has begun approaching the judiciary to pre-emptively restrict the victims’ freedom to protest.

### 2.1 STATE-SANCTIONED ‘WHITE VAN’ ABDUCTION-STYLE ARRESTS CONTRIBUTING TO FEARS OF A RETURN TO PAST TACTICS

***“There may not be enforced disappearances in the full sense of the legal term anymore, but there are state-sanctioned abduction style arrests taking place... These are the first two steps of an enforced disappearance. The only thing we’re not seeing so far is the denial of the ‘arrest’.”***

- Brito Fernando, Chair, Families of the Disappeared<sup>9</sup>

During the internal armed conflict that began in 1983, and even following its end in 2009, ‘white vans’ were used in notorious abduction-style arrests in Sri Lanka, where critics and dissidents were subject to enforced disappearances by the state or state-aligned groups.<sup>10</sup> In recent months, the state appears to be resuscitating elements of this heinous practice,<sup>11</sup> contributing to fears of a return to past tactics.

In one such incident on 14 February 2022, 31-year-old Shehan Malaka Gamage, who had been seeking justice over the April 2019 bombings, alleged that men who had come in a white van, dressed in civilian clothing accosted him in Panadura, in the Kalutara district, in a threatening manner before arresting him.<sup>12</sup> Shehan had recognised one of the men as a Criminal Investigation Department (CID) officer<sup>13</sup> based on a previous CID interrogation incident.<sup>14</sup> Shehan also streamed the incident live on his social media.<sup>15</sup> He was later arrested on charges of attempting to “excite disaffection toward the state,”<sup>16</sup> produced before court and released on bail.<sup>17</sup>

Another ‘white van’ incident was flagged by Shanakiyan Rasamanickam MP, where he alleged that unidentified men who claimed to be part of the state intelligence apparatus attempted to kidnap the Assistant Secretary of his

Party’s youth wing, in a white van.<sup>18</sup> The Kalmunai Police dismissed the accusations as false and misleading.<sup>19</sup>

### 2.2 INTIMIDATION TACTICS AND SURVEILLANCE

***“If I’m at the office or at a protest or preparing for a protest, the Oddusuddan Police call me and harass me. If the media or the ICRC comes to meet us, after they’ve left, the Police comes and asks why they visited. I tell them they came to help us!”***

– Victim family member from Mullaitivu<sup>20</sup>

***“Because of the CID we feel threatened. We don’t know when they’ll call or when we’ll meet the CID. We’re afraid something will happen to us when we’re moving about.”***

– Victim family member from Mullaitivu<sup>21</sup>

In 2021, Amnesty International released a report<sup>22</sup> flagging multiple local and international organisations reporting<sup>23</sup> on the shrinking space for dissent from as far back as in 2018. In particular, protests by families of the forcibly disappeared in the north and east of Sri Lanka were under surveillance by the

<sup>9</sup> Interview with Amnesty International in July 2021

<sup>10</sup> Read more in “Only Justice Can Heal Our Wounds”: *Listening to the Demands of Families of the Disappeared in Sri Lanka*, Amnesty International, May 2017, <https://www.amnesty.org/en/documents/asa37/5853/2017/en/>

<sup>11</sup> Article 2 of ICPED lays out the three cumulative elements of an enforced disappearance: (1) Deprivation of liberty against the will of the person; (2) Involvement of government officials, at least by acquiescence; (3) Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.

<sup>12</sup> *Social activist Shehan Malaka arrested by CID*, The Morning, 14 February 2022, <https://www.themorning.lk/social-activist-shehan-malaka-arrested-by-cid/>

<sup>13</sup> The CID is the investigation arm of the Sri Lanka Police

<sup>14</sup> *CID summons social activist for questioning*, NewsWire, 23 August 2021, <https://www.newswire.lk/2021/08/23/cid-summons-social-ativist-for-questioning/>

<sup>15</sup> *Activist Shehan Malaka granted bail, day after he was arrested by CID in the street*, Newsfirst, 15 February 2022, <https://www.newsfirst.lk/2022/02/15/activist-shehan-malaka-granted-bail-day-after-he-was-arrested-by-cid-in-the-street/>

<sup>16</sup> Section 120 of Sri Lanka’s Penal Code

<sup>17</sup> *Sri Lanka’s Archbishop Speaks Out Against Activist’s Arrest*, The Diplomat, 16 February 2022, <https://thediplomat.com/2022/02/sri-lankas-archbishop-speaks-out-against-activists-arrest/>

<sup>18</sup> Shanakiyan Rajaputhiran Rasamanickam MP’s allegation was made on Twitter on 17 February 2022, <https://twitter.com/ShanakiyanR/status/1494326420994392065?s=20&t=2LmZhJwnUvyHirv1RVNaUA>

<sup>19</sup> *Shanakiyan’s white van accusations false and misleading: SL Police*, The Morning, 19 February 2022, <https://www.themorning.lk/shanakiyans-white-van-accusations-false-and-misleading-sl-police/>

<sup>20</sup> Interview with Amnesty International in February 2022

<sup>21</sup> Interview with Amnesty International in February 2022

<sup>22</sup> *Old ghosts in new garb: Sri Lanka’s return to fear*, Amnesty International, February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

<sup>23</sup> See, for e.g., Adayaalam Centre for Policy Research, *Situation brief no. 2: Surveillance, harassment and intimidation of disappearances’ activists in the north-east*,

<sup>30</sup> August 2018, <http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/> and *Sri Lanka: Families of ‘Disappeared’ Threatened*, Human Rights Watch, 16 February 2020, <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened>





The Police complaint  
lodged regarding  
the abduction of  
Kanavathipillai  
Ravindran in a white  
van in 2007

செவ்வாய்  
1/29/07

பேர்டீட் டீபீர்டீட் எம்.1/8

பேர்டீட் டீபீர்டீட்  
முறைப்பாடு ஏற்றுக்கொள்ளல்  
Acknowledgement of Complaint

பேர்டீட் டீபீர்டீட் } 122/எம்.1/8  
பொலீஸ் நிலையம் }  
Police Station }  
திகதி } 2007/01/29  
Date }

பேர்டீட் டீபீர்டீட் கலை  
முறைப்பாடு செய்பவரின் பெயர்  
Name of Complainant

சுமந்த் குமார்

பேர்டீட் டீபீர்டீட் டீபீர்டீட்  
முறைப்பாட்டின் வகை  
Nature of Complaint

சுமந்த் குமார் கலை

டீபீர்டீட் டீபீர்டீட் டீபீர்டீட்  
தகவல் புத்தக விபரம்  
I. B. Reference

229 / 481 6413

டீபீர்டீட் டீபீர்டீட் டீபீர்டீட்  
முறைப்பாடு பதிபவரின் கையொப்பம்  
Signature of Recording Officer

டீபீர்டீட் டீபீர்டீட் டீபீர்டீட்  
முறைப்பாடு பதிபவரின் பெயரும்  
பதவியும் பதிவிலக்கமும்  
Name Rank & Reg. No. of  
Recording Officer

I. M. S. சுவாமி

எம்.1/29/07





security forces. The report went on to flag how for several years, law enforcement officers- including members of the CID, made visits to organisations and activists demanding justice for the disappeared, to inquire about their work and funding sources. This has been perceived as a form of intimidation. Victim families have further been subjected to other forms of intimidation, including photographing and video recording their protests, harassment through phone calls and incessant questioning.<sup>24</sup>

**“When we go to a protest, we know that the CID is watching us. They try to be one among the crowd and as soon as the protest is over, they run away. They sometimes know about the protests before we do!”**

– Victim family member from Jaffna<sup>25</sup>



👁️ ↑ At their protest site in Mullaitivu, families of victims mark the number of days since their collective protests began

Across the board, victim families complained that they are photographed incessantly by authorities<sup>26</sup> dressed in civilian clothing at protests they organise or attend. Some even shared their experiences of how neighbours of the disappeared and activists had been harassed to provide information on the protestors as recently as in November 2021.<sup>27</sup> They also complained of receiving calls from the authorities in the night trying to harass and intimidate their work — in some cases presuming victim families’ involvement in various other protests not directly focusing on the issue of enforced disappearances.<sup>28</sup>

Reports<sup>29</sup> also indicate that representatives from the protests who attended the UNHRC sessions in Geneva in 2018 were subject to reprisals, harassment and intimidation, sometimes upon their return — a practice that has been flagged by the UN Secretary-General’s report on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights in 2017,<sup>30</sup> 2019,<sup>31</sup> 2020,<sup>32</sup> and 2021.<sup>33</sup>

## 2.3 RESTRICTIONS ON PROTESTS AND MEMORIALISATION

**“If we agitate against government about the issue of disappearances, they might forcibly detain us abusing the Quarantine regulations available to contain the Covid-19 situation, saying we broke the law.”**

– Sandya Eknaligoda, wife of disappeared journalist Prageeth Eknaligoda<sup>34</sup>

**“We had planned to protest today but we were being followed. We had to split-up and go. Whenever there’s a special day coming up, the Police get a court order from the Vavuniya Magistrate’s court saying we’re not allowed to protest. It’s sometimes pre-emptive... even before we’ve planned anything. Key members of our association couldn’t step out for 10 days. Police say we’re trying to recreate LTTE. I try to avoid receiving the court orders, but now I’ve been summoned to court.”**

– Victim family member from Vavuniya<sup>35</sup>

**“When we try to organise protests, we get court orders. Last year for Maaveerar Naal,<sup>36</sup> there was a court order against me saying my protests are trying to recreate the LTTE movement and are trying to influence the public to get involved in this movement. The Police tried to arrest me.”**

– Victim family member from Kilinochchi<sup>37</sup>

As mentioned in the 2021 report,<sup>38</sup> the police have repeatedly tried to obstruct peaceful protests organized by families of the forcibly disappeared, at times using Covid-19 pandemic as a pretext. In August 2020, the police obstructed protests held in Batticaloa in the Eastern Province to mark the International Day of the Victims of Enforced Disappearances.<sup>39</sup> The police sought an interim order from Magistrates against the protests, citing, among other reasons, COVID-19 as a reason for the protests to be stopped.<sup>40</sup>

24 Adayaalam Centre for Policy Research, *Situation brief no. 2: Surveillance, harassment and intimidation of disappearances’ activists in the north-east*, 30 August 2018, <http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/>

25 Victim family member from Jaffna in an interview with Amnesty International in February 2022

26 Family members have identified these authorities as members of the Police including the CID and members of the military including military intelligence officers

27 Victim family member from Jaffna in an interview with Amnesty International in February 2022

28 Victim family member from Mullaitivu in an interview with Amnesty International in February 2022

29 Adayaalam Centre for Policy Research, *Situation brief no. 2: Surveillance, harassment and intimidation of disappearances’ activists in the north-east*, 30 August 2018, <http://adayaalam.org/situation-brief-no-2-surveillance-harassment-and-intimidation-of-disappearances-activists-in-the-north-east/>

30 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/36/31, March 2018, paras 72-74

31 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/42/30, September 2019, paras 96, 97

32 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/45/36, September 2020, paras 120-123

33 Report of the Secretary-General: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, UN Doc. A/HRC/48/28, September 2021, paras 110-111

34 Interview with Amnesty International in August 2021

35 Interview with Amnesty International in August 2021

36 Maaveerar Naal falls on November 27 and marks the day the first LTTE cadre was killed in combat in 1982

37 Interview with Amnesty International in February 2022

38 *Old ghosts in new garb: Sri Lanka’s return to fear*, Amnesty International, February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

39 *Disappearances in Sri Lanka: Struggles by families and reprisals*, Groundviews, 2 September 2020, [https://groundviews.org/2020/09/02/sinhalese-tamil-and-muslims-their-quest-is-the-same/?fbclid=IwAR0wmmg3DjeOUTYbeWTgI09sy9tBLa\\_9U4oIzhzERCuSiXlCAG3loFXR-o](https://groundviews.org/2020/09/02/sinhalese-tamil-and-muslims-their-quest-is-the-same/?fbclid=IwAR0wmmg3DjeOUTYbeWTgI09sy9tBLa_9U4oIzhzERCuSiXlCAG3loFXR-o)

40 *Old ghosts in new garb: Sri Lanka’s return to fear*, Amnesty International, February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>



This trend has continued into both 2021 and 2022.

**“Before any significant event, the police seek court orders against us and they’re also being granted by the judges in most cases. For example, remembering former combatants is banned from 21-27 Nov 2021. They say, ‘we came to know you’re organising a gathering with a lot of people, this will exacerbate Covid-19 situation, so you shouldn’t go ahead’.”**

- Victim family member from Mullaitivu<sup>41</sup>

According to victim families, the authorities now seek pre-emptive court orders more and more against key activists demanding truth and justice around the disappeared, obstructing their right to peaceful assembly, movement, and freedom of expression — a trend common in almost all districts in the north.

In court orders<sup>42</sup> seen by Amnesty International, Magistrates in the north have granted the Police’s requests to restrict victims’ rights to peaceful assembly in some cases up to a week, citing a number of domestic laws including the Prevention of Terrorism Act, the Penal Code, the International Covenant on Civil and Political Rights (ICCPR) Act and the Quarantine.

**“In our journey searching for our missing loved ones, we’ve faced a lot of threats to life. We’re fearful of what may happen to us from the time we leave home to when we get back. We regularly receive court orders restricting our movements. This is affecting our mental health, and gets in the way of our livelihood also.”**

- Victim family member from Mullaitivu<sup>43</sup>

The right to peaceful assembly<sup>44</sup>, freedom of association<sup>45</sup> and freedom of expression<sup>46</sup> are fundamental human rights recognised by Sri Lanka’s Constitution<sup>47</sup> as well as under the ICCPR, to which Sri Lanka is a state party. Under international law, including the ICCPR, these rights may only be limited where such restrictions are provided by law; and are strictly necessary for, and proportionate to, ensuring respect for the rights of others or for the protection of national security, public safety, public order or of public health or morals.<sup>48</sup>

International law also protects the right to liberty and security of person, including the prohibition of arbitrary detention.<sup>49</sup> Detention in the context of Article 9 refers to all forms of deprivation of liberty, including in prison, house arrest, a psychiatric facility or when it is carried out in close premises where the person is not allowed to leave.<sup>50</sup>



*In Kilinochchi, a family member holds up a photo with their loved one at the protest site*



*Five from the same family in Jaffna have disappeared after surrendering to the Sri Lankan Army in May 2009. The youngest was 7 months at the time.*



41 Interview with Amnesty International in February 2022

42 An e.g., is the court order AR/873/21 issued by the Mullaitivu Magistrate on 17 November 2021 against 14 family members of the disappeared

43 Interview with Amnesty International in February 2022

44 Article 21, ICCPR

45 Article 22, ICCPR

46 Article 19, ICCPR. The ability to memorialise loved ones can be interpreted as a form of expression: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

47 Chapter 3 of Sri Lanka’s Constitution lays out the Fundamental Human Rights

48 Further guidance on these restrictions can be found in UN Human Rights Committee General Comments 34 and 37

49 Article 9, ICCPR

50 WGAD Deliberation No. 1 on house arrest (Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1993/24, 12 January 1993)



நீதிவான் நீதிமன்றம் - முல்லைத்தீவு,  
கௌரவ நீதிவான் திரு. T. சரவணராஜா அவர்கள் முன்னிலையில்,  
புதுச்சேரி மாவட்டம்  
வழக்கு இல : AR/873/21 17.11.2021

1979ம் ஆண்டின் 15ம் இலக்க குற்றவியல் நடவடிக்கைமுறைச்  
சட்டக்கோவை கோவையின் பிரிவு 106(1)இன் கீழான  
தடையத்தரவு

பிரதிவாதிகள் :-

01. [REDACTED] : [REDACTED]  
உடையார்க்கட்டு
02. [REDACTED] : [REDACTED]
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05. [REDACTED] : [REDACTED]
06. [REDACTED] : [REDACTED]
07. [REDACTED] : [REDACTED]
08. [REDACTED] : [REDACTED]
09. [REDACTED] : [REDACTED]
10. [REDACTED] : [REDACTED]
11. [REDACTED] : [REDACTED]
12. [REDACTED] : [REDACTED]

1

13. [REDACTED]  
14. [REDACTED]

மேலே பெயர் குறிப்பிடப்பட்ட பிரதிவாதிகள் ஆகிய நீங்கள் 1979ம் ஆண்டின் 48ம் இலக்க பாய்க்கரவாத தடைச்சட்டத்தின் கீழ் தடைசெய்யப்பட்ட அமைப்பான தமிழ் ஈழ விடுதலைப் புலிகளின் உறுப்பினராக இருந்து புத்தத்தில் மரணமடைந்தவர்களை நினைவுகூரும் நிகழ்வினை 2021.11.21ம் திகதியிலிருந்து 2021.11.27ம் திகதியவரை புதுச்சேரியிலுள்ள பொலிஸ் பிரிவுக்குட்பட்ட பகுதியில் மரணமடைந்தவர்களை நினைவுகூரும் நிகழ்வினை நடாத்த ஆயத்தம் ஆயத்தம் செய்துள்ளதாக அறியமுடிவதாகவும், இதில் அதிகமான பொதுமக்கள் கலந்துகொள்வதாக தகவல் கிடைத்துள்ளதாகவும், COVID 19 நோய் பரவுவதை தடுக்கும் காரண ஆலோசனைகளை பின்பற்றாமையால் வந்தகால அரங்கம் பிரகடனப்பட்டுள்ளதென்றும், அதன்படி பொதுமக்களை ஒன்றுகூட வேண்டாம் என்றும், மக்களுக்கிடையில் சரக இடைவெளியினை பின்பற்றாமையாக குறிப்பிடப்பட்டுள்ளது என்றும், வந்தகால அரங்கம் மீறிச் செயற்பட்டால் அது இலங்கை தடைசெய்த சட்டக்கோவையின் பிரிவுகள் 120, 185 மற்றும் 264இன் கீழும், 2007ம் ஆண்டின் 56ம் இலக்க சிலில் மற்றும் அரசியல் உரிமைச் சட்டத்தின் பிரிவு 3(1), 3(2)இன் கீழும், 1897ம் ஆண்டின் 03ம் இலக்க தடைசெய்யப்பட்ட மற்றும் தோய்த்தடுப்பு (நிகழ்வு) சட்டத்தின் பிரிவு 5(1)கீழும், 1991ம் ஆண்டின் 31ம் இலக்க தேசிய மோக்ருவர்த்து ஆணைக்குழுச் சட்டத்தின் கீழும் தண்டிக்கப்படவேண்டிய குற்றம் ஆகும் என்றும், இந்நிகழ்வின்கு சிலர் ஏறிப்படி தெரிவிப்பதாகவும், எனவே இது மக்களுக்கு சமாதானக் குலைவினை ஏற்படுத்தும் என்றும், பொதுத்

2


தொல்லையை உருவாக்கும் என்றும் புதுச்சேரியிலுள்ள பொலிஸ் பொறுப்பதிகாரி அவர்கள் அறிக்கையிட்டுள்ளார்.

எனவே மேற்குறிப்பிட்ட பிரதிவாதிகள் ஆகிய நீங்கள் புதுச்சேரியிலுள்ள பொலிஸ் பிரிவிற்குட்பட்ட பகுதியில் 2021.11.21ம் திகதி தொடக்கம் 2021.11.27ம் திகதியவரையான காலப்பகுதியில் மாவீரர் நினைவுகூரும் நிகழ்வினை நடாத்துவதனை தடைசெய்து குற்றவியல் நடவடிக்கைமுறைச் சட்டக்கோவையின் பிரிவு 106(1)இன் கீழ் தடை உத்தரவைப் பிறப்பிக்கின்றேன்.

[Signature]  
நீதிவான்,  
நீதிவான் நீதிமன்றம்,  
முல்லைத்தீவு,  
17.11.2021.

**Magistrate  
Mullaitivu**

3

 Court order AR/873/21 issued by the Mullaitivu Magistrate on 17 November 2021 against 14 family members of the disappeared



# 3. THE OFFICE ON MISSING PERSONS

***“The government didn’t have a huge political interest in the dissappearances issue. They set up the OMP only because of international pressure.”***

– Brito Fernando, Chair, Families of the Disappeared <sup>51</sup>

***“Before I die, I want answers, so my children don’t need to continue this search. The answers we’re looking for are: Where are they? Are they alive? If not, what happened to them? Who is responsible for their disappearance or death? What is the justice and accountability they will receive?”***

– Victim family member from Mullaitivu<sup>52</sup>

In September 2015, the then government co-sponsored UNHRC resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka.<sup>53</sup> The resolution paved the way for the establishment of an Office on Missing Persons (OMP).<sup>54</sup> However, following the change in government in November 2019, the Sri Lankan Foreign Minister announced the government’s intention to withdraw support for UNHRC resolution,<sup>55</sup> raising concerns around the future of the Office. At its 46<sup>th</sup> session in February 2021,

the UNHRC passed a new resolution 46/1<sup>56</sup> that stressed the importance of maintaining support for institutions like the OMP and the Office for Reparations, safeguarding its independence and effective functioning, providing both offices with sufficient resources and technical means to effectively fulfil their mandates, allowing them to proceed with interim relief measures for affected vulnerable families, with a gender focus, and resolving the many cases of enforced disappearances so that the families of disappeared persons can know their fate and whereabouts.<sup>57</sup>

***“We’ve given time to the government to do something, but nothing has happened.”***

– Victim family member from Kilinochchi<sup>58</sup>

***“It’s important to acknowledge that the Tamil families of the disappeared have proven themselves right about the OMP because of their deep insight into State responses on the issue of the disappeared.”***

– Ruki Fernando, Human rights activist<sup>59</sup>

***“It was after 30 years we got this office [referring to the OMP]. They did good things at the start, like getting budgetary allocation for interim relief, giving Certificates of Absence, State-acknowledged events to mark the International Day of the Disappeared, making the list of the disappeared public and thereby acknowledging the number of disappeared. But we expected more.”***

– Brito Fernando, Chair, Families of the Disappeared<sup>60</sup>

51 Interview with Amnesty International in July 2021

52 Interview with Amnesty International in February 2022

53 UNHRC resolution A/HRC/RES/30/1, Promoting reconciliation, accountability and human rights in Sri Lanka, October 2015, <https://www.mfa.gov.lk/wp-content/uploads/2018/03/RES-30-1.pdf>

54 *Sri Lanka: The government cannot afford to fail the Office on Missing Persons*, Amnesty International, October 2018, <https://www.amnesty.org/en/latest/news/2018/10/sri-lanka-the-government-cannot-afford-to-fail-the-office-on-missing-persons/>

55 Statement by Dinesh Gunawardena, Minister of Foreign Relations of Sri Lanka at the 43rd Session of the Human Rights Council, 26 February 2020, <https://mfa.gov.lk/43rd-session-hrc/>

56 UNHRC resolution A/HRC/RES/46/1, Promoting reconciliation, accountability and human rights in Sri Lanka, March 2021, <https://undocs.org/A/HRC/RES/46/1>

57 OP 3, A/HRC/RES/46/1

58 Interview with Amnesty International in July 2021

59 Interview with Amnesty International in July 2021

60 Interview with Amnesty International in July 2021



***“The OMP has become a place that’s feeding the stomachs of government’s friends.”***

- Sandya Eknaligoda, wife of disappeared journalist Prageeth Eknaligoda<sup>61</sup>

The Office on Missing Persons (OMP) was made a statutory body in 2016. It’s the first permanent body with a mandate, among others, to trace missing persons and to clarify the circumstances in which such persons went missing, to identify avenues of redress for missing persons and relatives, and to collate data related to missing persons.<sup>62</sup> Unlike most previous state-led initiatives that took the form of Presidential Commissions of Inquiry where Commissioners were appointed by Presidential decree, the OMP’s members were appointed through the parliament’s Constitutional Council. With the 20<sup>th</sup> amendment to the Constitution that was passed in 2020, the Constitutional Council was replaced with a Parliamentary Council that has less power over appointments to independent commissions, the judiciary and bodies like the OMP. In effect, appointments are now made directly by the President.<sup>63</sup>

There is a stark resistance and lack of trust in the OMP that has been observed by Amnesty International. The basis for these feelings were grounded in reasons around the lack of trust in its membership, the title of the office not recognising the state’s involvement in the disappearances,<sup>64</sup> the removal of the district-level breakdown of lists of the disappeared from the OMP’s website and attempts to further cut down the number of cases that come within the purview of

the OMP in order to reduce the official number of disappearances in the country.

### 3.1 MEMBERSHIP

***“The government is trying to lead the OMP to die a natural death. How? Upali Abeyratne was appointed as the Chair. His attitude towards the disappeared is apparent in his work with the Presidential Commission of Inquiry on Political Victimization.”***

- Brito Fernando, Chair, Families of the Disappeared<sup>65</sup>

***“The previous commissioners did some things and achieved something. They got involved with cases. They observed cases. Reports were produced... made some progress. We could at least talk with them — even Northern mothers. We can’t even talk to the Commissioners now.”***

- Sandya Eknaligoda, wife of disappeared journalist Prageeth Eknaligoda<sup>66</sup>

The Act setting up the OMP dictates that the OMP should consist of seven members,<sup>67</sup> and that the composition of members reflect the pluralistic nature of the Sri Lankan society, with previous experience in fact finding or investigation, human rights law, international humanitarian law, humanitarian response, or possess other qualifications relevant to the carrying out of the functions of the OMP.<sup>68</sup> Several members have been appointed since the previous members’ term

ended in February 2021. Many of these appointments have raised concerns.

*Upali Abeyratne:* Following the resignation of the previous Chairperson, the President appointed former Supreme Court judge Upali Abeyratne as the new Chairperson to the OMP in December 2020. Retired Supreme Court judge Upali Abeyratne served as the Chairman to the Presidential Commission of Inquiry on Political Victimization, when the Commission attempted to interfere in the prosecution of state actors accused of enforced disappearances — a conflict of interest. The appointment raised concerns among civil society and victims of human rights violations as they said it indicated a clear lack of government support for the Office’s mandate and work.<sup>69</sup> One year since his appointment to the OMP, the retired judge was also appointed to head the Right to Information (RTI) Commission.<sup>70</sup> The appointment was made at a time when he already held public office, despite the Act establishing the RTI Commission explicitly barring RTI members from holding any public office.<sup>71</sup> Media reports indicated at the time that the retired judge would not commit to when he would step down from his post as OMP chairman.<sup>72</sup>

*H. Jayantha Shantha Kumara Wickremarathne:* In May 2021, the Parliamentary Council recommended the nomination of H. Jayantha Shantha Kumara Wickremarathne as a Commissioner to the OMP.<sup>73</sup> Mr Wickremarathne is a former Inspector General of the Police, who has been accused of concealing evidence in the case of Lasantha Wickrematunge, a

61 Interview with Amnesty International in August 2021

62 OMP Act, Section 10, <https://www.srilankalaw.lk/Volume-VI/office-on-missing-persons.html>

63 The President shall seek the observations of the Parliamentary Council in making appointments to the OMP. He is not bound by the recommendations of the Parliamentary Council

64 Many victim families argue that the OMP should have been called the Office of the Forcibly Disappeared- recognising the state’s involvement in the disappearances.

65 Interview with Amnesty International in July 2021

66 Interview with Amnesty International in August 2021

67 OMP Act, Section 4(1)(a)

68 OMP Act, Section 4(2)

69 Letter to Michelle Bachelet: Appointment of Justice Abeyratna to lead the OMP is a direct insult and an act of violence – Sandya Eknaligoda, Sri Lanka Brief, 21 December 2020, <https://srilankabrief.org/2020/12/the-appointment-of-justice-upali-abeyratne-as-head-of-the-omp-is-a-directinsult-and-an-act-of-violence-against-families-of-the-disappeared-sandya-ekneligoda/>

70 Retd. SC judge Abeyratne and others appointed to new RTI Commission, The Sunday Times, 12 December 2021, <https://www.sundaytimes.lk/211212/news/retd-sc-judge-abeyratne-and-others-appointed-to-new-rti-commission-465185.html>

71 RTI Act, Section 12(2)(iii) [https://www.rti.gov.lk/images/resources/RTI\\_Act\\_Sri\\_Lanka\\_E.pdf](https://www.rti.gov.lk/images/resources/RTI_Act_Sri_Lanka_E.pdf)

72 Retd. SC judge Abeyratne and others appointed to new RTI Commission, The Sunday Times, 12 December 2021, <https://www.sundaytimes.lk/211212/news/retd-sc-judge-abeyratne-and-others-appointed-to-new-rti-commission-465185.html>

73 Tweet by the Official Twitter handle of the Sri Lankan parliament, 20 May 2021, <https://twitter.com/ParliamentLK/status/1395391026194354176?s=20> and Parliamentary Council agrees to appoint Sanjay Rajaratnam as Attorney General, NewsLk, 21 May 2021, <https://www.news.lk/news/political-current-affairs/item/32289-parliamentary-council-agrees-to-appoint-sanjay-rajaratnam-as-attorney-general>





*A mother in Mullaitivu shows a photo of her son and daughter, both disappeared in Vadduvahan in May 2009*





journalist and editor who was murdered in 2009.<sup>74</sup>

Other appointments to the OMP reportedly include Mr. Mahesh Katulanda, Mr. W. D. Ganegala, Mr. T. Yogarajah, Mrs. S. D. A. Thassim and Mr. Shiraz Noordeen.<sup>75</sup>

***“Now there’s no huge interest in keeping up with the OMP or its operations.”***

- Brito Fernando, Chair, Families of the Disappeared<sup>76</sup>

To mark the international day of the disappeared, on 30 August 2021, the OMP held an online event.<sup>77</sup> None of the speakers were women, despite women being at the forefront of the issue of disappearances throughout the world. Only one speaker was from the OMP (then Chair), while the rest were MPs, the Minister for Justice and a Buddhist priest. The Minister of Justice assured that the OMP will be re-energized and that the Ministry is hoping to monitor its work. Institutionally, this will further impede the independence of the office.

### 3.2 LISTS OF MISSING PERSONS

***“OMP didn’t go to the community enough and explain the mandate. Not even one inquiry was conducted by the OMP based on past Commissions’ evidence.”***

- Brito Fernando, Chair, Families of the Disappeared<sup>78</sup>

In late November 2020, the former members of the OMP released a list of complaints and information received by the OMP regarding missing and disappeared persons.<sup>79</sup> The list, at the

time of release, excluded information from the Batticaloa district. By the OMP’s own admission, Batticaloa recorded the highest number of cases.<sup>80</sup> Amnesty International welcomed the long overdue release of the list as an important first step for the families that have waited years to learn of the fate of relatives they have not seen or heard from since the conflict.<sup>81</sup> It was an important gesture towards establishing the truth, a formal acknowledgement, and a form of memorialisation. We also called on the Sri Lankan authorities to initiate investigations into the circumstances of the disappearances, identify anyone suspected of criminal responsibility, and, where there is sufficient admissible evidence, prosecute them in fair trials before ordinary civilian courts and without recourse to death penalty.<sup>82</sup>

The lists published on the OMP’s website detailed a total of 9,391 cases from each district (except Batticaloa):

1. Ampara (554)
2. Anuradhapura (270)
3. Badulla (6)
4. Colombo (110)
5. Galle (291)
6. Gampaha (241)
7. Hambantota (391)
8. Jaffna (2,088)
9. Kalutara (187)
10. Kandy (551)
11. Kegalle (104)
12. Kilinochchi (1,010)
13. Kurunegala (382)
14. Mannar (487)
15. Matale (289)
16. Matara (548)
17. Monaragala (71)
18. Mullaitivu (524)
19. Nuwara Eliya (13)
20. Polonnaruwa (341)
21. Puttalam (80)
22. Ratnapura (214)
23. Trincomalee (73)

24. Vavuniya (566)  
The lists published also included 3,742 cases of Missing In Action (MIA)

1. Air Force (34)
2. Army (3256)
3. Navy (452)

In 2021, the list has been taken down from the OMP’s website,<sup>83</sup> which itself does not exist anymore.

In a briefing note sent to diplomatic missions in Colombo in 2021 on the ‘Progress made by the Government of Sri Lanka (GoSL) on Human Rights and Reconciliation’<sup>84</sup>, the Foreign Ministry noted that the OMP has received a total of 21,374 cases. Although that figure was meant to have already been adjusted for duplicates, according to the briefing note, the new leadership of the OMP has removed 2,644 cases for apparently not falling within the OMP’s mandate. They had also taken out the 3,742 cases the OMP received from families of MIA officers, saying they are being ‘handled by alternate means’ – even though it is the OMP’s mandate to fulfil the rights of those MIA. The case load therefore was reduced to 14,988. Family members complained that there are concerns around the OMP’s attempts to reduce the number of complaints of missing persons, which they perceived as a move to make insignificant the issue of disappearances in the country.

### 3.3 VICTIMS’ LACK OF TRUST IN THE OMP

***“We have met more than 12 commissions but haven’t got a single answer from any of them.”***

– Victim family member from Kilinochchi<sup>85</sup>

74 *Ex-Police Chief’s appointment to the Office of Missing Persons sparks concern*, NewsWire, 31 May 2021, <https://www.newswire.lk/2021/05/31/ex-police-chiefs-appointment-to-the-office-of-missing-persons-sparks-concern/> and *Appointment of former police chief to OMP ‘obliterates any chance of truth and justice’ says ITJP*, Tamil Guardian, 1 June 2021, <https://www.tamilguardian.com/content/appointment-former-police-chief-omp-obliterates-any-chance-truth-and-justice-says-itjp>

75 Tweet by the official Twitter handle of the OMP, 21 January 2022, <https://twitter.com/ompsrilanka/status/1484532624060465153?s=20&t=9n-6VS62WC07g911ZmUVc7Q> and Lawyer Shiraz Noordeen appointed Commissioner of OMP, Colombo Times, 22 December 2021, <https://www.colombotimes.net/lawyer-shiraz-noordeen-appointed-commissioner-of-omp/>

76 Interview with Amnesty International in July 2021

77 Tweet by the official Twitter handle of the OMP, 30 August 2021, <https://twitter.com/ompsrilanka/status/1432276430721744896?s=20>

78 Interview with Amnesty International in July 2021

79 Tweet by the official Twitter handle of the OMP, 26 November 2020, <https://twitter.com/ompsrilanka/status/1331909597460713472?s=20>

80 Paragraph 4.38, OMP Annual Report 2020

81 *Sri Lanka: Deliver justice, truth and reparation to families of the disappeared*, Amnesty International, November 2020, <https://www.amnesty.org/en/latest/news/2020/11/sri-lanka-deliver-justice-truth-and-reparation-to-families-of-the-disappeared-2/>

82 *Sri Lanka: Deliver justice, truth and reparation to families of the disappeared*, Amnesty International, November 2020, <https://www.amnesty.org/en/latest/news/2020/11/sri-lanka-deliver-justice-truth-and-reparation-to-families-of-the-disappeared-2/>

83 The official website of the OMP, previously at <http://www.ompsrilanka.org/>

84 Amnesty International has seen a copy of the note

85 Interview with Amnesty International in July 2021



**“The northern mothers’ instincts on the OMP have been proven correct. National mechanisms won’t work. All state institutions that can look into this issue, are being incapacitated... The govt wants to destroy the OMP with people who are useless, so that it gets destroyed naturally. It’s become an office that doesn’t provide victims any solace. It’s not one of our institutions now.”**

- Sandya Eknaligoda, wife of disappeared journalist Prageeth Eknaligoda<sup>86</sup>

In conversations with Amnesty International, victim families flagged a number of reasons they lack faith and trust in the OMP. Families of the disappeared in the north presented five cases with “good evidence” to the former members of the OMP to find them answers, but this did not yield them any answers.<sup>87</sup> Further they recollected that even though the OMP received funds from the budget, it has come to no use as they’re not able to see any results by way of truth around their disappeared loved ones.<sup>88</sup> They revealed to Amnesty International that they felt let down and that they do not value the OMP.<sup>89</sup>

Victim families were weary and suspicious of letters they had received from the OMP over the past few months. They insisted that the letters sought information they had already provided the office. Some even feared the information was being sought by the OMP to prepare Death Certificates.

**“They called and said that if we don’t re-register with the OMP they won’t count my case.”**

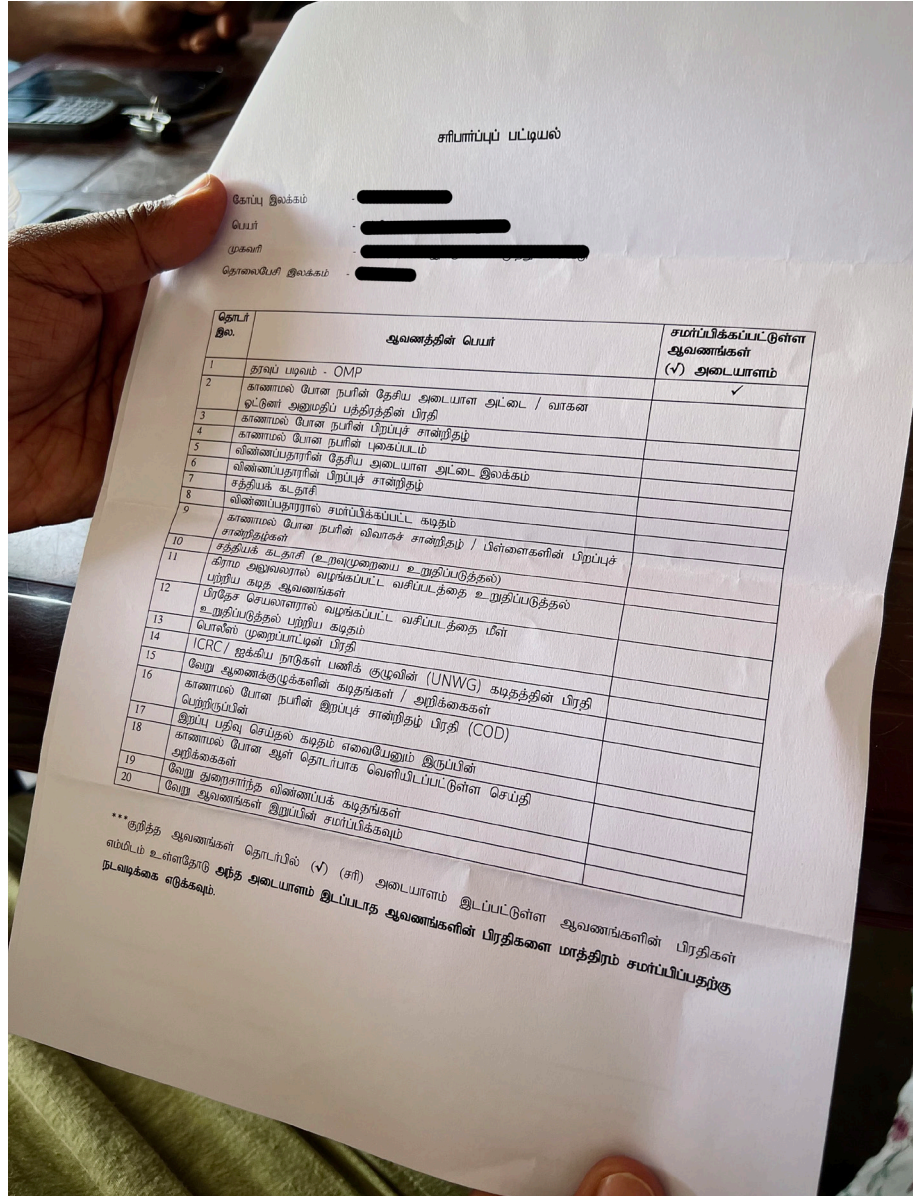
- Victim family member from Kilinochchi<sup>90</sup>

**“The OMP has written asking for more information. They called me asking why I haven’t responded. I’m a witness to the handover [of her husband] to the Army, so what more can I provide than what I have already? I’m scared that if I give any further information to the OMP, they will issue his Death Certificate.”**

- Victim family member from Mullaitivu<sup>91</sup>



A victim family member holds up the letter they received from the OMP requesting further information



86 Interview with Amnesty International in August 2021  
 87 Victim family member from Kilinochchi in an interview with Amnesty International in July 2021  
 88 Victim family member from Kilinochchi in an interview with Amnesty International in July 2021  
 89 Victim family member from Kilinochchi in an interview with Amnesty International in July 2021  
 90 Victim family member from Kilinochchi in an interview with Amnesty International in February 2022  
 91 Victim family member from Mullaitivu in an interview with Amnesty International in February 2022





📷 Photos of disappeared family members at the protest site in Mullaitivu

## 4. OTHER GOVERNMENT INITIATIVES

Former initiatives such as providing interim relief (a form of compensation) and issuing Certificates of Absence, which were welcome initiatives accepted by some families of victims have halted altogether. Instead, a more robust drive to close cases of the disappeared altogether by issuing Death Certificates and compensation, has begun.

### 4.1 THE END OF THE ROAD FOR INTERIM RELIEF AND CERTIFICATES OF ABSENCE?

***“Interim relief is not being paid... Rs. 6000 a month as interim relief was something for the Southern families.”***

- Brito Fernando, Chair, Families of the Disappeared<sup>92</sup>

***The interim relief was a small win when it came to providing reparations. It's important to pursue it.”***

- Ruki Fernando, Human rights activist<sup>93</sup>

Under the OMP's recommendations, until final reparation was made, families had begun to receive Rs. 6,000 (approximately 30 USD) per month as a living allowance to ease the straitened circumstances and economic hardships they have endured with the disappearance of their relatives, including many individuals who were the sole income earners within those families. But the payments, which are just one of the several forms of reparation, were only reaching a limited number of affected families before being stopped altogether by the current government.<sup>94</sup>

The government has also halted the issuing of Certificates of 'Absence', which sought to provide a legal status to those who have disappeared, until such time when conclusive evidence of the fate of the individual is ascertained. The Certificate entitled the holders to the same rights enjoyed by the holders of Death Certificates, without being expected to accept a Death Certificate for legal purposes such as the facilitation of property transfer and ownership, the ability to formalize new partnerships (remarriages), apply for compensation, qualify for social welfare payments and pensions, and access frozen bank accounts.<sup>95</sup> From 2019 the OMP provided victim families with interim reports to access the Certificates, however it is unclear if the OMP will continue to assist victims in this process.

<sup>92</sup> Interview with Amnesty International in July 2021

<sup>93</sup> Interview with Amnesty International in July 2021

<sup>94</sup> Sri Lanka: Deliver justice, truth and reparation to families of the disappeared, Amnesty International, November 2020, <https://www.amnesty.org/en/latest/news/2020/11/sri-lanka-deliver-justice-truth-and-reparation-to-families-of-the-disappeared-2/>

<sup>95</sup> Certificates of Absence: A Practical Step to Address Challenges Faced by the Families of the Disappeared in Sri Lanka, Centre for Policy Alternatives, September 2015, <https://www.cpalanka.org/wp-content/uploads/2015/09/Certificates-of-Absence-FINAL.pdf>



## 4.2 'ACCESS TO JUSTICE' PROGRAMME – DEATH CERTIFICATES AND COMPENSATION

**“Now the justice minister is loitering in this area to show the international community they're doing something.”**

- Victim family member from Kilinochchi<sup>96</sup>

**“Ali Sabry has never come before so why is he coming just before UNHRC? Is he coming to perform a drama?”**

- Victim family member from Jaffna<sup>97</sup>

**“They're trying to convince us to take compensation and Death Certificates. Don't come here with compensation. We want answers!”**

- Victim family member from Mullaitivu<sup>98</sup>

Victim families speaking to Amnesty International felt very skeptical and angry about government attempts to reach out to them, especially just ahead of scheduled UNHRC sessions. Many of them perceived visits by the Minister of Justice, Ali Sabry to the north for the 'Access to Justice' programme<sup>99</sup> as an insincere attempt to offer them monetary compensation and Death Certificates without having investigated cases of disappearances. They went on to say that the government is abusing the vulnerable, precarious and desperate Covid-ridden dire economic situation of families to force them accept Death Certificates with monetary compensation.<sup>100</sup>

**“Ali Sabry said to us, 'How can we bring back someone who is missing?' Their aim of this 'Access to Justice' programme is to get us to accept Rs. 100,000 and the Death Certificate.”**

- Victim family member from Kilinochchi<sup>101</sup>

**“Don't know whether she's alive or not but I was given the Death Certificate. It's hard to believe if my daughter is gone or whether this was given to shut me up.”**

- Victim family member from Vavuniya<sup>102</sup>

Sri Lanka is a state party to the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED). Under the Convention, each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.<sup>103</sup>

State Parties are duty-bound to take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.<sup>104</sup>

On providing reparations, the Convention obligates state parties to ensure that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation,<sup>105</sup> and in offering reparation, cover material and moral damages and, where appropriate, other forms of reparation such as restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition.<sup>106</sup>

The Sri Lankan government initiatives have thus far failed to meet the families' right to truth, justice and reparations.

Families of victims further told Amnesty International that many families of the disappeared across the districts protested against the Justice Minister's visit, and they were obstructed from protesting and treated badly at the hands of the Police.

**“We were handled very badly by the Vavuniya police. Even our saris were torn. The purpose of our protest was to show our dissatisfaction. Even that wasn't allowed.”**

- Victim family member from Vavuniya<sup>107</sup>



Photo and National ID of P. Sujeeharan (18 years) from Mullaitivu last seen in April 2009

96 Victim family member from Kilinochchi in an interview with Amnesty International in February 2022

97 Victim family member from Jaffna in an interview with Amnesty International in February 2022

98 Victim family member from Mullaitivu in an interview with Amnesty International in February 2022

99 The Minister for Justice has reportedly said the main focus of the programme was the issue of missing persons and they hoped to issue a Death Certificate or compensation to them through Rs. 300 million the government had allocated from the budget to compensate for disappearances. Read more: *Ministry holds 'Access to Justice' Mobile Service in North*, Daily News, 26 January 2022, <https://www.dailynews.lk/2022/01/26/local/271075/ministry-holds-%E2%80%99access-jus-tice%E2%80%99-mobile-service-north>

100 Victim family member from Jaffna in an interview with Amnesty International in February 2022

101 Victim family member from Kilinochchi in an interview with Amnesty International in February 2022

102 Victim family member from Vavuniya in an interview with Amnesty International in February 2022

103 Article 24(2) of the ICPED

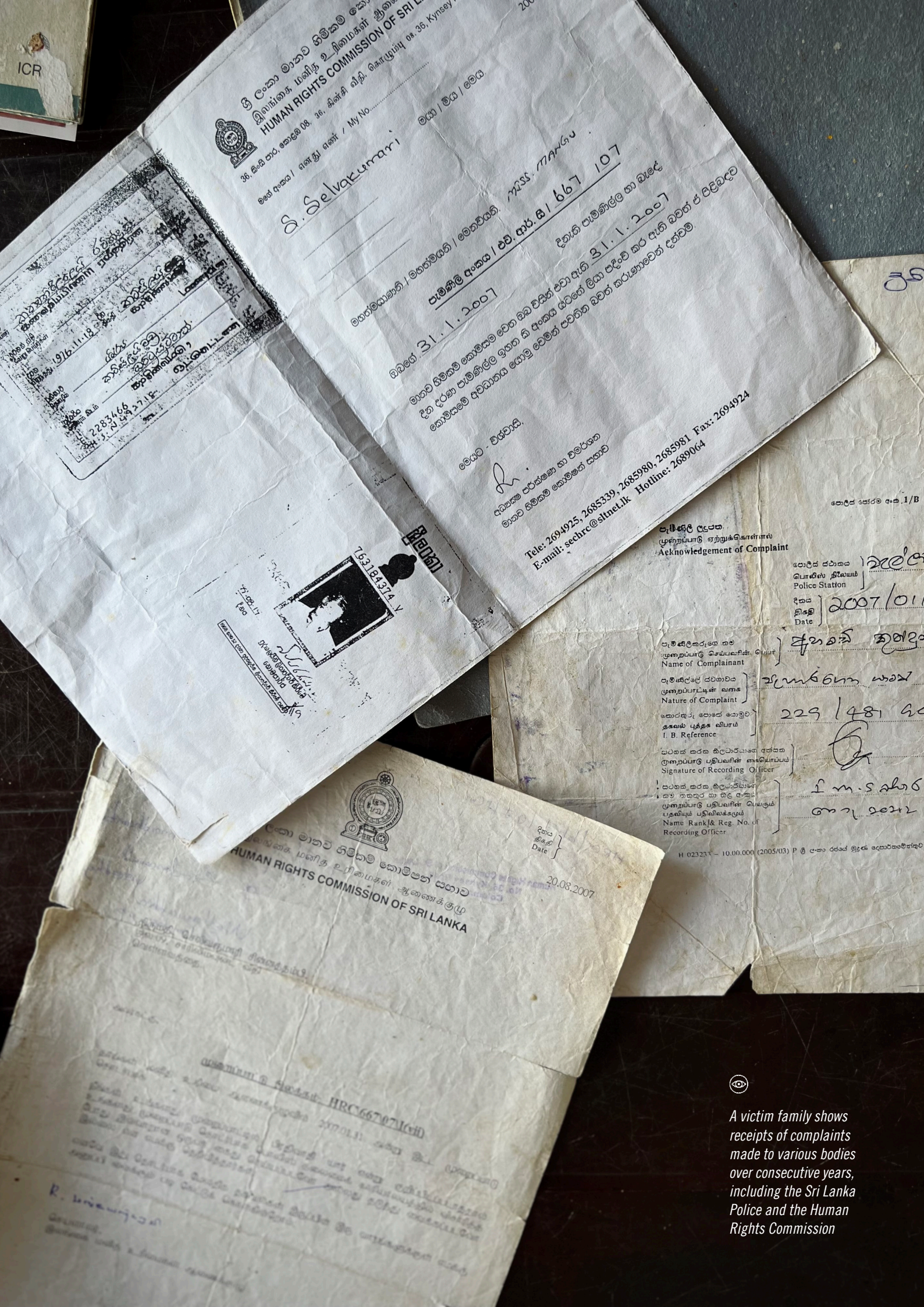
104 Article 24(3) of the ICPED

105 Article 24(4) of the ICPED

106 Article 24(5) of the ICPED

107 Victim family member from Vavuniya in an interview with Amnesty International in February 2022





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A victim family shows receipts of complaints made to various bodies over consecutive years, including the Sri Lanka Police and the Human Rights Commission



# 5. STATUS OF KEY EMBLEMATIC CASES

***“There is no justice. Anything that was achieved so far has been dismantled. We can’t have a whole lot of faith in the judiciary given the kind of people that are getting acquitted these days. Witnesses are being pressured. In one Presidential Commission report, there is a recommendation to reward one of the suspects in Prageeth’s case. We will have to rely on an international justice process.”***

– Sandya Eknaligoda, wife of disappeared journalist Prageeth Eknaligoda <sup>108</sup>

Both by way of the ICCPR<sup>109</sup> and the ICED,<sup>110</sup> international law obligates state parties to ensure that victims have a right to remedy. Except for one case, key emblematic cases that are before the courts have made no progress over the last two years. In some cases, attempts have been made by state mechanisms to undo the progress made thus far.

## 5.1 THE PRAGEETH EKNALIGODA DISAPPEARANCE CASE

The case, where nine military officers were indicted in 2019 for the 2010 abduction and murder<sup>111</sup> of journalist Prageeth Eknaligoda<sup>112</sup> is pending before the Colombo Permanent High Court. The hearings were postponed multiple times, owing in part to Covid-19 restrictions. The state prosecutors from the Attorney General’s department are in the process of leading evidence and defense counsel

for the accused are cross-examining state witnesses. To date, four witnesses have been cross-examined. Next court hearing is scheduled for April 2022. Amnesty International is observing the trial.<sup>113</sup>

In January 2020, President Gotabaya Rajapaksa appointed a Presidential Commission of Inquiry into “political victimization” under the previous government. Many state officials facing trial over human rights violations have complained of being “politically targeted” by the previous government and have sought the Commission’s support in absolving them from ongoing court cases. As a result, the Commission has intervened in cases that are pending before courts, especially where military members are implicated.

In the Eknaligoda case, key witnesses were summoned to testify before the Commission, in spite of a court order

preventing this.<sup>114</sup> The Commission later recommended the suspects in the case be acquitted of all charges filed against them in the Homagama Magistrate’s Court<sup>115</sup> and indictment filed in the Permanent High Court case against several suspects should be withdrawn. It further recommended rewarding suspects in the case and taking disciplinary action against Police investigators that pursued accountability.<sup>116</sup> If implemented, the Commission’s recommendations will undo progress in the only emblematic case on enforced disappearances to have made any progress.

Sandya Eknaligoda, the wife of the victim has complained of receiving phone calls from unknown numbers before court dates. She presumes the calls are from state actors attempting to harass and intimidate her.<sup>117</sup>

108 Interview with Amnesty International in August 2021

109 Article 2, ICCPR

110 Articles 3, 6, 7 and 11

111 Full list of charges available at: *Prageeth Eknaligoda case: Nine army officials indicted*, Daily Mirror, 27 November 2019, <https://www.dailymirror.lk/breaking-news/Prageeth-Eknaligoda-case-Nine-army-officials-indicted/108-178597>

112 For further details of the case, see: Amnesty International USA, 2011, <https://www.amnestyusa.org/pdfs/srilanka11.pdf>

113 See updates on the Amnesty International South Asia official Twitter handle: <https://twitter.com/amnestysasia/status/1461290594215419915?s=20&t=Ogaa3-f8LHWJLHI6Tkkg>

114 Update on the case on Amnesty International South Asia’s official Twitter handle: <https://twitter.com/amnestysasia/status/1309039133772443648>

115 The Homagama case is regarding the 2009 abduction of Prageeth Eknaligoda allegedly by military intelligence officers.

116 A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization, Centre for Policy Alternatives, April 2021, <https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-Col-SPCol-on-Political-Victimization.pdf>

117 Interview with Amnesty International in August 2021



## 5.2 THE 'NAVY 11' CASE

The case refers to the enforced disappearance of 11 individuals—most of whom are Tamils, in 2008 and 2009, allegedly in an abduction racket spearheaded by members of the Sri Lankan Navy.<sup>118</sup> Senior military commanders are implicated in the case. In August 2018, the Criminal Investigation Department (CID) of the police arrested Lt. Commander Chandana Prasad Hettiarachchi, alias “Navy Sampath”, as the main suspect in the case. The CID accused then Chief of Defence Staff Admiral Ravindra Wijegunaratne of shielding one of the main suspects, and the court ordered his arrest. In February 2019, former Commander of the Sri Lanka Navy, Admiral Wasantha Karannagoda, was named as the 14th suspect in the case. He was accused of having known about the enforced disappearance by naval personnel he had command responsibility over and choosing to take no action. In August 2021, without publicly providing reasons for its decision, the Attorney General’s department decided not to proceed with charges against Wasantha Karannagoda over his alleged role in the enforced disappearance.<sup>119</sup> In December 2021, the President appointed him as the Governor of the North Western province.<sup>120</sup>

The “Navy 11” case has faced many obstacles. The 2020 Presidential Commission of Inquiry into “political victimization” recommended that Admiral Wasantha Karannagoda, Rear Admiral D.K.P. Dassanayake and others accused in the case should be acquitted of all charges in the case filed against them in the Fort Magistrate’s Court.<sup>121</sup> It also recommended the withdrawal of the indictment filed against them in the Permanent High Court Trial at Bar held in Colombo.<sup>122</sup> The Commission

additionally recommended that criminal investigators, lawyers and others involved in the investigation and prosecution be charged for “fabricating false evidence” and “corruption.”<sup>123</sup>

The case was an opportunity for the Sri Lankan authorities to deliver justice for crimes under international law, by ensuring that those reasonably suspected of criminal responsibility, including those implicated for aiding and abetting and under command responsibility, are brought to trial. The implementation of the Commission’s recommendations will directly undermine the victims’ right to a remedy.

Amnesty International has previously reported on the threats and intimidation against the lawyer appearing on behalf of the victims’ families.<sup>124</sup> The lawyer Achala Senevirathne has been threatened with violence and sexualized abuse on social media. She has alleged that navy officials accused in the case have telephoned her and threatened her.

## 5.3 THE NAVATKULI CASE

The case refers to the enforced disappearance of 24 Tamil youth allegedly by the military at Navatkuli in the Jaffna district in the north, in 1996. According to media reports, Major General Keppetiwala, the Director General of the Sri Lankan Infantry appeared before the Chavakachcheri Magistrates court in December 2021 for the inquiry. The case will be heard at the end of March 2022.<sup>125</sup>

In 2021 Amnesty International released a report<sup>126</sup> that documents the intimidation faced by Kumaravadivel Guruparan who appeared as counsel for petitioners in the Navatkuli case. The Jaffna-based human rights organization he founded has been visited repeatedly by the police. Guruparan believes that the visits are intimidation tactics used by the state for his appearance in the case.



↑ Mothers of the disappeared in Mullaitivu hold up a protest banner

118 For further information, see: *Sri Lanka: Authorities falter on accountability in ‘Navy 11’ case*, Amnesty International, 4 August 2021, <https://www.amnesty.org/en/latest/news/2021/08/sri-lanka-authorities-falter-on-accountability-in-navy-11-case/>

119 *Sri Lanka: Authorities falter on accountability in ‘Navy 11’ case*, Amnesty International, 4 August 2021, <https://www.amnesty.org/en/latest/news/2021/08/sri-lanka-authorities-falter-on-accountability-in-navy-11-case/>

120 *Admiral of the Fleet Wasantha Karannagoda – New North-West Governor*, Newsfirst, 9 December 2021, <https://www.newsfirst.lk/2021/12/09/admiral-of-the-fleet-wasantha-karannagoda-new-north-west-governor/>

121 A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization, Centre for Policy Alternatives, April 2021, <https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-Col-SPCol-on-Political-Victimization.pdf>

122 A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization, Centre for Policy Alternatives, April 2021, <https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-Col-SPCol-on-Political-Victimization.pdf>

123 A Commentary on the Presidential Commission of Inquiry and the Special Presidential Commission of Inquiry on Political Victimization, Centre for Policy Alternatives, April 2021, <https://www.cpalanka.org/wp-content/uploads/2021/04/Finalized-doc-Col-SPCol-on-Political-Victimization.pdf>

124 *Old ghosts in new garb: Sri Lanka’s return to fear*, Amnesty International, February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>

125 *Sri Lanka: Case against a Major General re disappearance of 24 Navatkuli youth in 1996; journalists barred, media intimidated*, Sri Lanka Brief, 16 December 2021, <https://srilankabrief.org/sri-lanka-case-against-a-major-general-re-disappearance-of-24-navatkuli-youth-in-1996-journalists-barred-media-intimidated/>

126 *Old ghosts in new garb: Sri Lanka’s return to fear*, Amnesty International, February 2021, <https://www.amnesty.org/en/documents/asa37/3659/2021/en/>





A mother in Kilinochchi showing the photo of her disappeared son



Photos of family members disappeared during Sri Lanka's conflict displayed at the victims' protest site in Mullaitivu





# 6. CONCLUSIONS AND RECOMMENDATIONS

***“Wrongdoers have to be punished. There is no accountability for them locally. Therefore bringing us justice falls on the international community.”***

– Victim family member from Vavuniya <sup>127</sup>

In less than one year since the UNHRC passed resolution 46/1 drawing the world’s attention to the “clear early warning sign of a deteriorating situation of human rights in Sri Lanka,”<sup>128</sup> the plight of victims of the forcibly disappeared has worsened. On top of the serious human rights violations they have been victim to already, the victim families now face a new dimension of human rights violations that are taking place in the country, cracking down on their internationally recognised personal freedoms, while they struggle to further their campaign for truth and justice for the disappeared.

The Sri Lankan government must urgently and genuinely take account of the demands of families of the disappeared, agitating for answers for more than a decade. They must prioritise, respect and facilitate the families’ rights to truth, justice and reparations without exerting pressure on them to close the cases on their missing loved ones. In the meantime, the government is duty-bound by international law to protect and create an enabling environment for the families of the disappeared to enjoy their rights to free expression, association, peaceful assembly, liberty and security of person including the prohibition against arbitrary detention.

The international community must rigorously monitor Sri Lanka’s deteriorating human rights situation, including the impact on victims of enforced disappearances, with a view of pursuing avenues for international justice where sufficient evidence exists.

***“Even recently some have come out [of detention]. We’re scared if we push too much, and if our loved ones are alive, they may be killed.”***

– Victim family member from Mullaitivu<sup>129</sup>



A family member observes a banner displayed at their disappearances protest site in Kilinochchi



127 Victim family member from Vavuniya in an interview with Amnesty International in February 2022

128 UNHRC resolution A/HRC/RES/46/1, Promoting reconciliation, accountability and human rights in Sri Lanka, March 2021, <https://undocs.org/A/HRC/RES/46/1>

129 Victim family member from Mullaitivu in an interview with Amnesty International in February 2022





A mother in Mullaitivu wraps up for the day at the victims' protest site



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