

# THE PHENOMENON OF DISAPPEARANCES IN SRI LANKA\*

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## 1. Introduction

Since independence, emergency powers have been repeatedly invoked in Sri Lanka. Although the stated objective of imposing emergency rule is the maintenance of law and order, emergency powers have often enabled the police and the security forces to act with scant regard for the law, or for the fundamental rights of individuals. Indeed, at times, emergency regulations have facilitated gross violations of human rights by the police and the security forces, including causing the disappearances of tens of thousands of persons held in the custody of the police or the security forces. The requirement under the 1978 Constitution for the declaration of a state of emergency to be debated and approved by parliament every month has not inhibited the continuance of emergency rule.

This chapter reviews the recent history of disappearances in Sri Lanka, being the first time that a separate chapter devoted to this subject has been included in a *Sri Lanka: State of Human Rights* report. It draws particularly on the findings of the zonal Presidential Commissions of Inquiry into Disappearances that were established by President Kumaratunga in November 1998, and also reviews the other institutions set up by both the present and previous governments as an ostensible means of curbing disappearances. Information relating to reported disappearances in 2000 is also included. However, it needs to be emphasised at the outset that no official institution other than the infamous Board of Investigation into Disappearances in Jaffna consisting of Defence Ministry officials has been empowered to date to investigate the many hundreds of disappearances which were reported in the North and East prior to 1<sup>st</sup> January 1998, in the context of civil strife in this area. Thus, whereas the scale and pattern of disappearances which occurred in the South during and after the period of the Janatha Vimukthi Peramuna (JVP) uprising, and in the North and East since 1988, have now at least received some degree of official recognition, the same cannot be said for those disappearances which occurred in the North and East in earlier years.

Over the years, the rate at which people have disappeared has peaked at certain times, often in response to acts of violence against the state and in the context of a rigorous imposition of emergency rule. Landmark events in Sri Lanka's history of disappearances include: the JVP uprising of 1971; the increased militancy of Tamil youth following the communal riots of 1983; the signing of the Indo-Lanka Accord in 1987 after which the JVP started disrupting civil administration in the South; the presidential and parliamentary elections of 1989 and 1990, followed by the breakdown of the peace talks between the

government and the LTTE in June 1990; and the suicide bomb attack on Maj. Gen. Hapangama, the Army Commander in charge of the Jaffna Town in July 1996.

In 1989 and 1990, when parliamentary and presidential elections were held during the JVP insurgency, the rate of disappearances reached particularly alarming levels. The provisions of the Prevention of Terrorism Act No. 48 of 1979 (PTA) and the Emergency Regulations (ER) promulgated under section 5 of the Public Security Ordinance No. 25 of 1947 (PSO), gave the police and security forces wide powers of arrest and detention, and enabled detainees to be held *incommunicado* for long periods of time. In addition, the emergency regulations were in force at times which permitted the security forces and the police to dispose of bodies without post-mortem examinations or inquests. This facilitated the cover up of deliberate and unlawful killings of those in custody or otherwise, and the perpetration of torture and disappearance with impunity by the police and the armed forces. Many of the tens of thousands of people who disappeared at this time had been detained under the provisions of the PTA and the ER; others were simply abducted on mere suspicion without reference to any legal provision whatever. Article 15(7) of the Constitution of Sri Lanka, however, provides for the restriction of rights declared and recognised in Articles 12, 13(1), 13(2) and 14

*in the interest of national security, public order and the protection of public health and morality or for the purpose of securing due recognition and respect for the rights and freedoms of others .... for the general welfare of a democratic society.*

Most victims of disappearance have been young men, detained in the context of armed opposition against the state by Tamil separatist groups in the North and East, and by members of the predominantly Sinhala JVP in the South. At times when the police and security forces were able to commit gross violations of human rights with impunity, leading to many thousands of disappearances, so too were other unscrupulous people able to settle personal and political grievances by passing false information to the police and the security forces in the hope that their rivals would be disposed of. Sri Lanka became notorious internationally during this period for its violations of human rights. According to the United Nations Working Group on Enforced and Involuntary Disappearances, Sri Lanka ranked second only to Iraq for the number of disappearance cases reported to the Working Group.<sup>[1]</sup>

## **2. The Modus Operandi of Causing Disappearances.**

The *modus operandi* of causing disappearances has changed over time in Sri Lanka, and the rate of reported disappearances increased rapidly in the late 1980s. Between 1984 and mid-1987, Amnesty International recorded over 680 disappearances in the North and East of people who had been detained by police or security forces, as the Tamil separatist

groups gained strength in the wake of the 1983 communal riots. From mid-1987 to March 1990, the Indian Peace Keeping Force (IPKF) was responsible for the North and East under the terms of the 1987 Indo-Sri Lanka Accord, and during this period Amnesty International recorded 43 disappearances for which the IPKF was believed to be responsible.<sup>[2]</sup> These cases involved mostly young men who had been arrested by uniformed members of the security forces in front of witnesses, but who were never seen again. The forces involved denied holding the prisoner and relatives were unable to establish their whereabouts. At times, large groups of young men were arrested together, and simply disappeared.<sup>[3]</sup>

After the IPKF arrived in the North and East in 1987, the Sri Lankan security forces moved to the South, where the JVP was mobilising against the Indo-Sri Lanka Accord. The JVP began to target for assassination, members of the ruling party, leftist parties which supported the Accord, members of the security forces and others. As their campaign grew in strength, they used terror tactics to enforce widespread strikes and stoppages of work. In this context, the security forces' response was to use tactics of counter terror; a massive rise in the numbers of extrajudicial killings and disappearances followed, including abductions and killings attributed to vigilante 'death squads' outside governmental control, which in some cases were subsequently found to have connections with the police or other security forces.<sup>[4]</sup>

By June 1990, when hostilities between the LTTE and government forces resumed in the East, the JVP had effectively been crushed in the South. The Sri Lankan security forces returned to the North and East, taking the tactics of widespread killings and disappearances utilised in the South back with them. Amnesty International estimated that some 3,000 people disappeared in the East in the initial months of resumed fighting there.

The ways in which persons were removed involuntarily and subsequently made to disappear in the late 1980s/early 1990s are given succinctly in Interim Report II of the Presidential Commission on Involuntary Removal or Disappearance of Persons in the Central, North Western, North Central and Uva Provinces, referred to as the Central Zone Commission.<sup>[5]</sup> Extracts from these findings, which relate to cases that the Commission had investigated, are set out below:

- a. That persons have been involuntarily removed either from their homes, at round ups, at checkpoints or at random sites, by police personnel, members of the armed forces or others, not identified.
- b. In some cases, lists of persons appear to have been given by some politicians of the area. In most other cases, the evidence reveals that the persons involuntarily removed were either Sri Lanka Freedom Party (SLFP) organisers or active supporters of the SLFP. It

seems clear that political opponents of the then regime had been eliminated under the guise of crushing the JVP.

The very large number of killings and disappearances that took place during the latter part of the 1980s and the early 1990s points to the fact that the removals and killings were with the knowledge and tacit approval of those in power at that time.

An analysis of the removals and killings shows a marked increase from the day of the nominations for the Presidential Election in 1988 and continued in the manner until the general elections and thereafter. The security personnel who until then had dealt with the JVP problem in a fair manner were goaded into indiscriminate removals and killings, after an alleged ultimatum purported to have been issued by the JVP, that unless the service personnel deserted their posts, members of their families would be killed. It is probable that this ploy was adopted by the then government to prod the security forces to crush their political opponents.

c. In almost every case the persons removed had been taken away on the pretext that they had to be questioned and their statements recorded.

d. In most of such cases the police stations or the army camps of the area had subsequently denied having removed such persons, in spite of some of the witnesses having identified the persons who had participated in such removals.

e. In some cases, persons so removed had been seen in custody at police stations and at army detention camps, either by the complainants or by other persons whose evidence was made available to the Commission. No entries of arrest or detention appears to have been made in any of the books or registers maintained by the police or security forces in the case of persons who are alleged to have disappeared.

f. When persons went to the police station to complain about the removals they were usually driven away and their complaints were not recorded. In the cases where the complaints had been recorded, what was stated by the complainants had been recorded with distortions.

g. A surprising feature is that complaints of abductions in most cases had been entered in the Minor Offences Information Book of the police station. Abduction with intent to kill is punishable under the Penal Code with rigorous imprisonment up to 20 years and a fine. The Officers-in-Charge of police stations concerned and their superiors should be held responsible for this default.

- h. There had been cases where the Police Headquarters had issued letters denying that certain persons had ever been taken to custody, when there were witnesses who had seen them in custody at the police stations.
- i. Personal rivalries account for the removals and killings in some cases.

### **3. Efforts to Check Disappearances.**

Under pressure from the international human rights community for the scale of gross violations committed in the country, the Government began to respond in the early 1990s with the establishment of new human rights mechanisms. First, in late 1989 when the height of the JVP insurgency was over, it granted access to Sri Lanka to the International Committee of the Red Cross (ICRC), which started to visit detainees held in police and military custody; it then invited the UN Working Group on Enforced or Involuntary Disappearances and the UN Special Rapporteur on Summary or Arbitrary Executions to visit the country.<sup>[6]</sup> Then, in 1991 it began to establish new institutions for human rights protection. Some of the steps it took are briefly analysed below.

It should be said at the outset, however, that none of the steps taken have been adequate to end the practice of disappearance in Sri Lanka. Certainly the rate at which disappearances are committed has reduced, but they still continue. For example, at least 20 instances of disappearances in 2000 were reported to Amnesty International.<sup>[7]</sup>

The US State Department Report for 2000 states as follows regarding Sri Lanka:

*Disappearances at the hands of the security forces continued in the North and the East. During the year, there were no reports of disappearances in Colombo, or Jaffna. The army, navy, police and paramilitary groups caused as many as 11 disappearances in Vavuniya and Trincomalee through September 29. In January, bodies of three Tamils allegedly taken by the Home Guards near Trincomalee, were found; two of them had been decapitated. In December, eight Tamil civilians were reported missing in Mirusuvil after being arrested and tortured by the SLA. Two SLA soldiers were identified as perpetrators and admitted to murdering seven of the civilians. The bodies were exhumed. One SLA commissioned officer and six additional SLA soldiers were arrested later. At the year's end the army commander had ordered an inquiry into the incident. Human Rights nongovernmental organisations (NGO), including Amnesty International (AI), reported an increase in disappearances in Vavuniya during the second half of the year. As with extra judicial killings, the exact number of disappearances was impossible to ascertain due to censorship of news about security force operations and infrequent access to the North and the East. However, the UN Working Group on Enforced or Involuntary Disappearances lists Sri Lanka*

*as a country with an extremely large number of nonclarified disappearances. Those who disappeared during the year and in previous years are presumed dead.*

The World Report for 2001 of the Human Rights Watch speaks of the inability of the Human Rights Commission to trace seventeen people detained by the security forces in Vavuniya during the year 2000, confirming the rush of disappearances in August at Vavuniya, referred to in the Report of Amnesty International.<sup>[8]</sup>

### *3.1 Human Rights Task Force (HRTF)*

The Human Rights Task Force (HRTF) was originally established in August 1991 by a regulation gazetted under section 19 of the Sri Lanka Foundation Law No: 31 of 1973.<sup>[9]</sup> With the change of the government in 1994, the performance of this body was reviewed and it was reconstituted with greater authority by regulations made by the President under section 5 of the Public Security Ordinance (PSO).<sup>[10]</sup> The objectives of the reconstituted HRTF were to

*monitor observance of fundamental rights of persons detained in custody, otherwise than by a judicial order, and to ensure that human treatment is accorded to them, and which body shall for this purpose have the following powers and duties –*

*i. to maintain a comprehensive and accurate register of such person with full details of their detention and to ensure observance of, and respect for their fundamental rights, and to ensure human treatment for them;*

*ii. to investigate and establish the identity of each such person by a proper identification process;*

*iii. to monitor the welfare of such persons;*

*iv. to carry out regular inspections of places of detention, make roll calls and other necessary spot checks and to take immediate steps to remedy any shortcomings; and*

*v. to record any complaints, representations or grievances that may be made to it and to take immediate remedial action.*

In the exercise of these functions, the HRTF was particularly concerned to ensure that the fundamental rights of persons in custody were not violated. Its officials made unannounced visits to detention centres and interviewed detainees confidentially, providing detainees with an opportunity to air any grievances and requiring the persons responsible for the detention to ensure that at least the basic facilities were provided. The HRTF also helped to locate many persons taken into custody, if they were in unacknowledged detention. The

HRTF was primarily concerned with locating such missing detainees; it did not generally investigate who was responsible for such events.

The HRTF established regional offices in almost every province, making itself easily accessible to complainants and enabling its officers to visit detention centres more frequently. However, despite its efforts, disappearances of persons taken into custody continued.

Subsequently the President issued a directive dated 18<sup>th</sup> July 1995 to the armed forces and the police force under Regulation 8 of the said regulations [11] wherein special provisions were included to make the police and the security forces accountable for every person taken into custody. Paragraph 3 of this directive reads as follows:

1. The person making the arrest shall identify himself to the person arrested or any relative or friend of such person, by name and rank;
2. every person arrested or detained shall be informed of the reason for the arrest;
3. the person making the arrest or detention shall issue to the spouse , parents or any other close relative a document acknowledging the fact of arrest.
4. the person arrested shall be afforded reasonable means of communicating with a relative or friend to enable his whereabouts being known to his family.

Despite these specific directives, illegal arrests and detentions continue because there are no penal provisions to deal with those who do not comply with the directives.

### **3.2** *Commissions of Inquiry into Disappearances*

Complaints of involuntary removals and disappearances to the police or others in authority proved futile. The police often failed to record such complaints at all. In desperation, relatives of the disappeared sought the assistance of NGOs, both local and international. They even complained to Amnesty International (AI) and the United Nations Working Group on Enforced or Involuntary Disappearances (UNWGEID), in a bid to trace their lost ones. The pressure exerted by these organisations, by the UN Commission on Human Rights and by Western aid donors, induced the then President of Sri Lanka, Mr. Ranasinghe Premadasa, to appoint a Commission to inquire into and report on involuntary removals. However, President Premadasa did not open past disappearances up for inquiry; instead, he created a Commission – referred to as the B.E. de Silva Commission – which was mandated only to investigate disappearances that took place from the date of the Commission's establishment in January 1991. By this time, the rate of disappearances had anyway declined dramatically compared to its peak in 1989. The earlier mass killings and disappearances remained closed to investigation.

When the People's Alliance (PA) party contested the parliamentary elections in 1994, it made the issue of disappearances and human rights protection a major element of its election campaign. The PA promised to put an end to involuntary removals and disappearances and undertook to ensure that those responsible for disappearances would be dealt with effectively.

After coming to power, the new President, Chandrika Bandaranaike Kumaratunga, appointed three Commissions of Inquiry into the Involuntary Removal or Disappearance of Persons on 13<sup>th</sup> November 1994. These Commissions operated on a zonal basis: one covered the Northern and Eastern Provinces; the other covered the Western, Southern and Sabaragamuwa Provinces; while the third covered the Central, North Western, North Central and Uva Provinces.<sup>[12]</sup> These Commissions were mandated to inquire into and report on disappearances that took place after 1<sup>st</sup> January 1988. They were thus empowered to report on the period of mass disappearances from 1988 – 1990, which the B.E. de Silva Commission had not been authorised to investigate, but they were not empowered to investigate the hundreds of disappearances that had been reported in the North and East and the rest of the country prior to 1988.

The terms of reference of these Commissions were as follows:

*To inquire into and report on the following -*

- a. Whether any persons have been involuntarily removed or have disappeared from their places of residence at any time after 1<sup>st</sup> January 1988;*
- b. The evidence available to establish such alleged removals or disappearances;*
- c. The present whereabouts of the persons alleged to have been so removed, or to have so disappeared;*
- d. Whether there is any credible material indicative of the person or persons responsible for the alleged removals or disappearances;*
- e. The legal proceedings that can be taken against the persons held to be so responsible;*
- f. The measures necessary to prevent the occurrence of such alleged activities in the future;*
- g. The relief, if any, that should be afforded to the parents, spouses and dependents of the persons alleged to have been so removed or to have so disappeared.*

These Commissions received about 30,000 complaints in all (which included multiple complaints in respect of many of the disappeared persons). In mid-1997 the Commissions



were asked to halt their inquiries and to submit reports on the basis of the complaints they had inquired into to date. Their reports, which were handed to the President in September 1997, have since been published as Sessional Papers. [\[13\]](#)

The Commissions were unable to inquire into all the cases reported to them. When they wrote their final reports, a total of 10,136 complaints remained uninvestigated. To deal with these remaining cases, the President appointed another Commission in April 1998, with island wide jurisdiction and with the same mandate as the three zonal Commissions, except that it was precluded from inquiring into new complaints.

However, around 16,000 further cases of disappearance that had not been reported to any previous Commission were brought to the notice of the All-Island Commission. Although the parties concerned now wished these cases to be investigated and made the particulars available to the Commission, the mandate of the Commission barred it from inquiring into them. These cases have thus not been investigated by any Commission of Inquiry to date. The All Island Commission handed its report to the President in August 2000, but the report is yet to be published.

### **3.3 Missing Persons Unit of the Attorney General's Department (MPU)**

The zonal Commissions recommended, among other things, that a special unit be established in the Attorney General's Department to study the evidence unearthed by the Commissions indicative of the persons responsible for disappearances, and ensure that such persons are brought to book. Consequently, in July 1998, a Missing Persons Unit (MPU) was established in the Attorney General's Department with these functions. It had to examine about 3,000 cases that the zonal Commissions had investigated where *prima facie* evidence of responsibility was available. The unit is headed by a Senior State Counsel and consists of five attorneys-at-law recruited on contract. It comes under the direct supervision of the Attorney General and the Senior Additional Solicitor General in charge of the Criminal Division of the Department. Three State Counsel assist the unit.

The MPU has categorised the cases as follows: those in which indictments could be filed straight away before the High Court; those which needed further investigation to tighten up the evidence; and those where the evidence was inadequate to establish proof beyond reasonable doubt, but was adequate to initiate disciplinary proceedings.

The MPU has initiated legal proceedings against over 500 police and armed forces personnel, but it will take several years for these cases to reach a conclusion. However, even though the provisions of the Establishment Code make it mandatory for the heads of departments to interdict these officers from service and commence disciplinary proceedings, no such action has been taken either by the Police or the Army Headquarters.

However, in respect of some gazetted officers,<sup>[14]</sup> the Public Service Commission (PSC) has taken disciplinary action. Discreet inquiries made by the writer revealed that the PSC has not taken action because neither the Police nor the Army Headquarters have forwarded the names of those concerned to it. Consequently, these personnel continue in service while their cases are pending in the courts. It is yet to be seen whether any of these cases will result in a conviction.

The cases in which legal action has been initiated are only those where there was already direct evidence of responsibility for abduction. Those where circumstantial evidence was available have not yet been taken up, because they would require a greater effort by the prosecutor.

It should be noted that causing disappearances is not a punishable offence under Sri Lanka's Penal Code. Thus, the most serious charge that can be levelled against persons responsible for disappearances is abduction with intent to murder.<sup>[15]</sup> As bodies have not been found in most cases of disappearance, it is very difficult to sustain a charge of murder.

Most of the cases that have been filed so far are against junior officers. This is because the Disappearances Investigation Unit within the Police Department (see below) simply does not return files relating to senior officers to the (MPU), claiming that its investigations are not yet complete. The MPU is then helpless to expedite action in these cases. The 'delays' on the part of the Police Department are said to result from 'considerations of brotherhood', which leads the investigators to protect brother officers, especially the seniors at the expense of the juniors.

It has been suggested that the establishment of a Special Unit and a Prosecutors' Office, on the model of the Bribery Commission would help to overcome this problem. However, this suggestion has not received serious consideration.

### **3.4** *Disappearances Investigation Unit (DIU) of the Police Department*

Consequent to the establishment of the MPU in the Attorney General's Department, it became necessary for a special unit to be established in the Police Department to attend exclusively to cases referred to the Inspector General of Police (IGP) for further investigation. This unit – the Disappearances Investigation Unit (DIU) – was established in 1997 with a retired Deputy Inspector General of Police as its head.

As evidence given before the Commissions of Inquiry is not admissible in courts of law, it is necessary for normal legal procedures to be followed prior to the institution of court proceedings. Thus, the MPU refers cases in which there is direct evidence of responsibility for causing disappearances to the IGP so that the statements of witnesses can be

recorded by police officers afresh. The evidence laid before the Commissions of Inquiry thus has to be re-recorded by police officers of the DIU, who use the evidence elicited by the Commissions as the basis for their investigations. At the beginning the year 2000, the IGP had referred 2796 such cases to the DIU for investigation.

The approved cadre of the DIU provides for one Senior Superintendent of Police (SSP), three Assistant Superintendents of Police (ASP), 18 Inspectors of Police, 7 Sub-Inspectors, 55 Police Constables and 21 police drivers. An Inspector heads each investigation team, while each ASP supervises five teams.

However, the teams work very slowly. This is possibly because the investigating DIU officers are sympathetic to colleagues who are under investigation and because there is little political will to see these prosecutions succeed. One SSP who was in charge of the Unit tried to take speedy action against some senior police officers named by the Commissions, but faced problems with the Police Department and experienced pressure to delay the investigations.

### **3.5** *The Human Rights Commission (HRC)*

A Human Rights Commission (HRC) was created under the PA government by the Human Rights Commission Act No. 21 of 1996; it began functioning in 1997. With regard to the prevention of disappearances, amongst other powers, the HRC can monitor the welfare of persons taken to custody by the police or security forces, a function which it took over from the HRTF, which was disbanded in 1998 when the HRC had been created. Upon receiving a complaint, the HRC can visit the person at the place of detention. If the place of detention is not known and if there is evidence of arrest, the HRC has the power to ask the arresting authority for the place of detention, so that it can visit and look after his welfare.

The existence of a body that can visit detainees is an important safeguard against torture and disappearance. However, the HRC has been unable to perform this task adequately because it does not have adequate staff. Further, the law does not empower the HRC to give binding decisions; it can only make recommendations. In the event that such recommendations are not complied with, the HRC is empowered to make a full report of the facts to the President, who can place the report before the Parliament. However, this procedure does not appear to have been followed so far.

The HRC has been criticised by some human rights activists for being a 'lion without teeth'; it has not fulfilled the hopes that the creation of such an institution inspired. Those who are bent on violating the rights of detainees can carry on regardless of the HRC.

The HRC was unable to provide information on the number of complaints of disappearances it had received during 2000. Given Sri Lanka's horrific record of disappearances, it is astonishing that the HRC fails to distinguish in its records between reports of 'missing people' and reports of people who may have disappeared in custody. The only figure that the HRC could provide in response to this request was that during year 2000, 1,146 persons had been reported to the Commission as missing, of whom 912 had been traced. Yet HRC could not say whether the remaining 234 could be categorised as 'disappeared'. Repeated requests for a reply failed to get any response from HRC. Nor was it possible to find out from their records whether any of the 912 people who had been traced had experienced periods of unacknowledged detention.

The HRC alone cannot be blamed for its failings. Although it was expected that the HRC would act as an independent body, in practice it continues as an appendage of the Presidential Secretariat and has not been provided with adequate resources. For example, the HRC has to get approval from the Presidential Secretariat for cadre provisions and other necessities. It was reported sometime ago that a directive had been sent by the Secretary to the President to the HRC to close down some of its branch offices, in order to cut down expenditure. The HRC would have been far more effective if it had been created as a truly independent body; indeed, the Human Rights Commission Act should be amended accordingly.

### ***3.6 Anti-Harassment Committee.***

Following numerous complaints made to the President concerning illegal arrests and detentions of Tamil people in Colombo by the armed forces and the police, a special presidential committee of Ministers and senior Members of Parliament headed by the Minister of Cultural Affairs was appointed in July 1998. At first this was called the Anti-Harassment Committee, but later its name was changed to The Committee of Inquiry into Undue Arrests and Harassment. The function of this Committee was to examine representations regarding illegal arrests, detentions, or harassment so that prompt action could be taken to grant relief. The Committee was serviced by the Public Complaints Unit of the Ministry of Justice, which passed appropriate complaints on to the Committee for action. The Committee was expected to submit weekly reports to the President and help prevent the rights of persons taken into custody being violated.

The Committee consists of seven members, all of whom are Members of Parliament, and some of whom are Cabinet Members. The Committee was empowered not only to inquire into complaints but also to give appropriate directions to any head of the armed forces and the police with regard to any illegal arrest or undue harassment. Since, by definition, every case of disappearance is preceded by the arrest or taking into custody of an individual by

the army, police or other person, this Committee potentially plays a key role in checking disappearances. However, its effectiveness has been questioned, partly because it is not accessible to people living outside Colombo, and because even within Colombo many do not know its existence as it has not been adequately publicised.

Another problem is that the functions of the Committee overlap with those of the HRC. People with knowledge of these matters would rather complain to the HRC than to the Committee, as the latter's powers do not compare favourably with those of the HRC.

### **3.7** *The Board of Investigation into Disappearances in Jaffna*

In 1996, a large number of people fled from the Jaffna peninsula into the Vanni while government forces were engaged in an operation to regain control of Jaffna from the LTTE. Many people returned after the security forces had taken over the peninsula, but following the suicide bomb attack on the Jaffna Town Commander, Maj.Gen. Hapangama, in July 1996, instances of youth disappearing in custody began to be reported. It is alleged that nearly 600 persons disappeared in Jaffna during this period.

When the government came under considerable pressure to trace and account for the disappeared, it appointed a Board of Investigation in 1997 to inquire into these complaints. However, as this Board consisted of officials of the Defence Ministry, it failed to win the confidence of the relatives of the victims. The Board conducted its inquiries inside Palaly Army Camp, which is a high security zone, and most of the complainants did not attend the hearings. This Board concluded its sittings in 1998; however, its report to the President has not been published to date.

## **4. Factors that Facilitate Disappearances**

Certain key factors facilitate the occurrence of disappearances. These include extensive powers available to the police and security forces under the PTA and the ERs and the climate of impunity that prevails which enables perpetrators of disappearances to believe that they will never be called to account.

The content of the ERs has been altered repeatedly over the years. At times, the powers of arrest and detention provided under the regulations are broader than at others; at times in the past the security forces have been empowered to dispose of bodies without a post-mortem examination or an inquest. The new Emergency Regulations promulgated in May 2000 are discussed in detail in the chapter on Emergency Rule. Suffice it to say here that they provide powers of arrest and detention far in excess of the limits set out in the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka ratified in 1980. The Commissions of Inquiry into Disappearances had recommended that the ERs should be amended to prevent disappearances taking place, as did international bodies

such as the UN Working Group on Enforced and Involuntary Disappearances. Yet in May 2000 the regulations were changed to weaken safeguards against arbitrary arrest and the abuse of detainees. This change took place with no reference to the 1997 directives issued by the President to the police and security forces on arrest and detention procedures (which had anyway in practice been largely ignored, perhaps partly because there were no sanctions available for non-compliance).

With regard to the continuing climate of impunity, it would appear that the government has not been sufficiently determined to ensure that perpetrators of disappearance are brought to justice. The Commissions of Inquiry appear to have been intended as a palliative for the general public and for the local and international human rights community; they made it appear that the government was genuinely concerned to provide redress for these gross human rights violations. In practice, however, there has not been sufficient will to act on the recommendations of these and other human rights bodies, or to ensure that the cycle of impunity is broken.

The MPU established in the Attorney General's Department is dependent on the assistance provided by the DIU of the Police Department. It is the DIU that has to conduct further investigations, record the evidence of witnesses and to tie up loose ends in the chain of evidence needed to obtain convictions in a court of law. Yet the DIU works so slowly that the MPU is unable to proceed in many cases. The few files that the DIU has disposed of and returned to the MPU concern only junior personnel.

It would appear that the only cases in which there may be sufficient political will to ensure that justice is done are those few cases that have been the focus of intense local and international pressure – and even then, only very few of these have resulted in successful prosecutions. The notable example was the case of the schoolboys who disappeared in Embilipitiya in late 1989, where convictions were reached. The Embilipitiya disappearances had been the subject of intensive, long-term campaigning by local and international human rights organisations, the wider public and the parents of those who had disappeared. The Southern Zone Disappearances Commission prepared a special report on these disappearances and unearthed quite a lot of information which facilitated speedy initiation of legal proceedings. The prosecutions in the other cases of disappearances that have been instituted have moved at a snail's pace and are not pursued in all earnest. So it is highly unlikely that these cases will end in convictions. However without swift and deterrent punitive action there cannot be an end to such violations.

The Establishment Code of the Government of Sri Lanka lays down the rules of procedure pertaining to all matters concerning persons employed by the government, including the police and security personnel. Section 21 of Chapter XLVIII of this Code provides for an

employee of the state to be interdicted from service if criminal proceedings have been initiated or are about to be initiated on charges which, if established, are sufficiently serious to warrant his dismissal. Yet none of the police officers or security personnel against whom court cases have been instituted based on the findings of Commissions of Inquiry have been interdicted; nor have disciplinary proceedings been initiated against such officers as required by the Establishment Code. This failure has an effect on how the cases proceed, for witnesses are reluctant to give evidence in court in cases where the accused is still in service, sometimes as officers-in-charge of police stations. There had been at least two cases brought to the notice of Amnesty International where witnesses have been threatened. **Consequent to representations made to the President and the Attorney General by Amnesty International, steps were taken to protect the witnesses.**

On a request made by the Disappearances Commissions, a specific directive was issued by the IGP to all police stations to preserve the "Telephone Registers, Prisoner's Detention Registers and other documents connected with the arrest and detention of persons covering the period 01.01 1988 to date"[16] until the Commissions (on disappearances) have completed their tasks. Yet the Commissions of Inquiry found that such books had been purposely destroyed to erase evidence that could implicate officers responsible for the custody of those who had disappeared, or in whose custody the disappeared person was last seen. Neither the then IGP nor the present IGP has taken any action against the OIC's of the police stations for this act of gross insubordination. Impunity thus appears to be condoned even by the IGP.[17]

There are numerous examples of the relevant authorities failing to act to bring known perpetrators of human rights violations to justice. Even a specific recommendation in Interim Report VII of the Presidential Commission of Inquiry covering the central zone to interdict forthwith an Assistant Superintendent of Police who had threatened to kill a witness who had testified before the Commission, was not complied with.[18] This witness is still said to be in hiding while the police officer concerned continues to enjoy promotions and other benefits arising from being in service.[19]

Since no action was taken against such an offender in spite of a specific recommendation made against him by a Commission appointed by the President, it is no surprise that members of the police and the security forces continue to disregard any restrictions that are imposed on their activities, and they continue to violate rights of persons with impunity.

## **5. Writ of Habeas Corpus**

The right to obtain a Writ of Habeas Corpus in the event of a person being taken into custody and detained unlawfully or *incommunicado*, is one of the important means

available to prevent a person taken into custody from being caused to disappear. Although only the Court of Appeal had the jurisdiction to receive and inquire into Habeas Corpus Applications (HCA) initially, this was later extended to the Provincial High Courts as well. However, only the High Court of the Eastern Province has availed this authority.

A study of the HCAs filed between 1988 and 1997 in respect of persons whose whereabouts were not known or were allegedly kept under unlawful detention, shows that out of the 2925 cases filed during that period, 272 had not been concluded as at the beginning of the year 2000. Most of those that had been concluded had taken over five years to be disposed of.[\[20\]](#)

This remedy is, unfortunately, both time consuming and expensive. Hence the easy accessibility and effectiveness of a Writ of this nature is questionable.

To make HCAs more effective and readily accessible, the jurisdiction of the Magistrate's Court should be enlarged to enable Magistrates to receive petitions, visit places of alleged detention, record evidence and forward observations to the High Court expeditiously for necessary action. Until such time, the benefits from a HCA to deter disappearances would be very limited.

## **6. Conclusion**

It is now over 10 years since the rate of disappearances in Sri Lanka reached its peak, but it now looks likely that most perpetrators of disappearances will not be brought to book at all, and the practice of causing disappearances will continue. The three zonal commissions appointed by the President to investigate disappearances handed their reports to the President in 1997. Who knows how long it may take for the culprits they identified to be brought to book? By then, many of the complainants and witnesses may be no more and the likelihood of these cases ending in convictions becomes all the more bleak. The report of the All-Island Commission on Disappearances was handed to the President in August 2000, and is yet to be made public.

Both the government and the main opposition party have in various ways either condoned disappearances or been silent spectators while persons disappeared during their respective regimes. Consequently, there is no strong lobby in parliament to press for speedy action against the perpetrators of disappearances; perhaps this is because the practice has been so widespread and that too many people are implicated. The present government came to power in 1994 with a pledge to end disappearances and other human rights violations. Today, however, it stands accused of hundreds of disappearances during its own time in power and has not shown itself determined to act against perpetrators and halt this practice. It lacks the will and the commitment that goes beyond mere rhetoric.



There is no substitute for swift and effective action against perpetrators irrespective of their rank or status. This will require changes in the law, administrative procedures and even the judicial structure to expedite the disposal of cases pertaining to disappearances.

The Commissions of Inquiry into Disappearances made exhaustive recommendations on the changes to law that are necessary to prevent further disappearances occurring in the future. These recommendations need to be carefully studied and implemented diligently, under the supervision of a body charged with this task. If they are not acted upon, the reports of these Commissions will become a dead letter, confined to the archives for the use of researchers and historians.

It is left for the government to honour its election pledge and prove its commitment to the eradication of violations of human rights in general and disappearances in particular, from the face of Sri Lanka.

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[1] See "Integrity of the Person" in *Sri Lanka: State of Human Rights 2000* (Law & Society Trust, Colombo, 1999), n 16.

[2] Amnesty International, "Sri Lanka: 'Disappearances and murder as techniques of counter-insurgency'" in *Disappearances and Political Killings* ((Amsterdam, 1994), p. 26.

[3] Ibid

[4] Ibid. p. 27.

[5] *vide* at p. 3 of the Report

[6] Op. Cit. p. 33

[7] Amnesty International – Report for 2001

[8] *vide* Human Rights Watch - 2001, pg 219.

[9] Government Gazette Extraordinary No. 173/2 of 31.7.1991

[10] Government Gazette Extraordinary No. 874/8 of 07.06.1995

[11] The Emergency (Establishment of a Human Rights Task Force) Regulation 1 of 1995 published in Government Gazette Extraordinary No. 874/8 of 07.06.1995

[12] Hereafter referred to as the Northern Zone, the Southern Zone and the Central Zone Commissions, respectively

[13] Sessional Paper V of 1997 – Southern Zone Commission Report, Sessional Paper VI of 1997 – Central Zone Commission Report, Sessional Paper VII of 1997 – Northern Zone Commission Report

[14] A category of officers whose appointments take effect with a gazette notification.

[15] Section 355 of the Penal Code, Cap 25 of the Legislative Enactments of Sri Lanka

[16] IGP's circular No. 1187/95 dated 24 February 1995 – File NO. C4/104/95.

[17] *Christian Worker*, 3rd Quarter, 1999, page 8

[18] Interim Report VII of the Presidential Commission on Removal or Disappearances of Persons in the Central, North Western, North Central and Uva Provinces. Sessional Paper III of 1997, page 20 & 21.

[19] *Christian Worker*, 3rd Quarter, 1999, page 8.

[20] Final Report of the Commission of Inquiry into Involuntary Removal or Disappearance of Persons.