

Sri Lanka's denial of investigations into gross disappearances

Asian Human Rights Commission

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Disappearances have been occurring on a large scale in Sri Lanka's south, north and east. Two local Sri Lankan groups, the Families of the Disappeared and the Right to Life, will commemorate these disappearances on October 27, together with the Asian Human Rights Commission (AHRC). The commemoration events will be held at Raddoluwa Seeduwa, where a monument for the disappeared was erected in 2000. It has become a source of much inspiration for family members of disappeared persons and others.

This year's commemoration will see family members gather to pay respect to their disappeared loved ones, perform religious ceremonies and discuss issues of accountability relating to these disappearances. Several Sri Lankan civil groups, including the Law Society and Trust, INFORM, CPD, the Civil Monitoring Commission, the Association for Disabled ex-Service Personnel, the Neelan Tiruchelvam Trust and the Meepura Newspaper will also take part.

On such an occasion, it is prudent to spotlight some salient features of disappearances in Sri Lanka:

Disappearances are usually preceded by abductions

Any arrest, according to law, has to be carried out by identifiable officers with the authorization of their immediate superiors. Some jurisdictions even require arresting officers to provide a receipt of arrest. They are also required to fax details of the arrest to higher ranking police officers and the Human Rights Commission. Law enforcement officers are expected to travel in their official vehicles, which are clearly identifiable.

In Sri Lanka, those who disappear are usually taken away by unidentified persons, to unidentified locations. Such abductions occur without any written authorization, and may be carried out by persons who do not belong to the law enforcement agencies, but with the direct or indirect approval of certain law enforcement officials. This serves to obscure responsibility, while creating an atmosphere of collusion between various agencies and personnel.

In this way, disappearances, unlike authorized arrests, remove liability from law enforcement officials. When individuals are abducted, their captors disguise themselves and use vehicles that cannot be easily recognized. In this way, legal obligations relating to arrest are circumvented.

Abductions are not reported to courts

Although strict regulations exist regarding the production of arrested persons before court within the time stipulated by law, no such procedures are followed in the case of abducted persons. Again, legal provisions and judicial safeguards against arbitrary arrest and detention are circumvented.

Places of detention are kept hidden

Places where persons may be detained are established by law; to hold persons in a place other than an authorized detention center amounts to a criminal act. When persons are arrested for the

purpose of making them disappear however, they are kept in a separate place, a place not legally established, and therefore, *de facto*, a place where the law has little reach.

No written records are kept

There are clear legal provisions requiring the police or military officers who make arrests to take detailed notes about the arrest, detention and interrogation of individuals. Higher authorities are expected to examine these records and to take appropriate steps on the basis of the information provided; to either initiate legal action against the suspects, or to release them. None of this applies to cases of disappearances; by not keeping records of abductions, authorities can avoid liability.

Killings in custody

Every disappearance in which a law enforcement agency is involved, directly or indirectly, is a killing in custody. It is a violation of both domestic and international law. It is murder by deliberate intent, since the entire process—from abduction to disappearance—is organized in a way to culminate in the death of the individual while in the custody of law enforcement officers. By way of command responsibility, senior law enforcement officials are also responsible for such custodial deaths.

Illegal disposal of bodies

Disappearances involve not only killings, but also the secret and illegal disposal of bodies, for instance in mass graves. Again, the process of illegal disposal is one that aims to make identification difficult, and remove responsibility from respective law enforcement agencies.

State responsibility

Large scale disappearances, as seen in Sri Lanka since 1971, can only occur when there is political approval for such activities by those in power. Law enforcement agencies can only engage in serious breaches of the law—as described above—with the assurance that no investigations or prosecutions will take place. It must be noted that disappearances and other serious crimes are also carried out by militants and criminals in Sri Lanka. While these cannot be blamed on the government and its law enforcement agencies, they must take responsibility for their failures in preventing such crimes and in investigating, arresting and prosecuting the offenders.

Sadly, there exists today an entrenched political and legal culture, the basis of which is a firm undertaking to *not* investigate or prosecute disappearances and other gross abuses of human rights. To this end, the country's criminal justice system is allowed to operate only outside the boundaries of the implicit agreement of impunity between the political regime and the law enforcement agencies.

The result has been the crippling of the criminal investigation system. There have been many Criminal Investigation Division (CID) officers, who put themselves at grave risk, and whose careers have suffered serious setbacks, due to their attempts to operate in accordance with their professional obligations, rather than to political dictates. Whereas previously Sri Lanka's investigating officers were able to successfully investigate crimes—investigations into former Prime Minister's Bandaranaike's assassination and into the 1962 attempted coup to overthrow the government are clear examples—today, perverse and unprofessional trends have taken over the system. Investigations into cases involving state agencies are now considered an act of great disloyalty. It is therefore not the capacity of the institutions that is faulty, but their credibility.

A close study into the reasons for the country's political authorities to create such boundaries for criminal investigation suggests that it is to keep the military happy. Serious investigations into disappearances and other gross human rights abuses, particularly those in which the military could be involved, are perceived by political authorities as a possible cause for an enormous rift between them and the military. There are fears that without military support, Sri Lanka's political system cannot survive, particularly due to the country's internal war on terrorism. As a result, state law enforcement agencies are allowed to function largely as they wish, with implicit guarantees of impunity, while the justice system is left crippled.

What does a crippled criminal investigation system mean for ordinary citizens? According to Sri Lanka's criminal procedure code, there are detailed procedures to be followed in the recording and investigation of complaints, as well as the prosecution of criminal cases. Individuals affected by gross human rights abuses will therefore go to their local police authorities to register their grievances. In cases of forced disappearances and other human rights abuses, victims and their families will quickly learn of the hidden agenda to not investigate or prosecute crimes committed by state officials.

After having exhausted all domestic remedies with no results, individuals may seek help from international human rights organizations, including the United Nations mechanisms. At this time, the same state that denies them domestic investigations, declares that international agencies need not interfere as there are local legal mechanisms to deal with such issues. Citizens are thus deprived of access to local as well as international remedies to the tremendous abuse they have faced. Indeed, if a state has the will and capacity to carry out investigations into gross violations such as forced disappearances, there is no justification for the United Nations human rights agencies to intervene. When such will or capacity is absent however, international agencies are obliged to stand in solidarity with victims and prevent further abuse. Sri Lanka's clear lack of political will to address the ongoing human rights violations therefore demands an urgent response from the UN.

The government should not be allowed to hide behind notions of state sovereignty after placing its citizens under grave circumstances with no redress. Whatever may be said by the country's propaganda machinery about the existence of local remedies, it is commonly known that no substantial action will be taken in support of victims. In fact, local and international human rights groups are resented by Sri Lanka's propagandists precisely because their exposure of systemic human rights abuses makes their job of falsification all the more difficult. They wish to silence all human rights groups and those who publish citizens' grievances.

It is clear that the propaganda machinery is an essential part of state repression. While one arm of the state commits disappearances and human rights abuses, another arm—the political leadership—guarantees impunity for such acts. The third arm—the propagandists—uses its pens to create the illusion that either the reports of such abuses are exaggerated, or that tough measures are taken to deal with such abuses.

The rough treatment Ms Louise Arbour, the UN High Commissioner for Human Rights received in the country, as well as the huge misinformation campaign in relation to her visit, carried out by the propaganda industry of the government, can only be explained within this understanding that exists between the political leaders of the state and the police and the military. It is in this area that much more research and study is needed if the present obstacles to the protection and promotion of human rights within Sri Lanka are to be successfully countered.

This year's commemoration of disappearances should be a day of reflection for all who want to see a decent way of life, free from repression and violence, prevail in Sri Lanka. Only when people become aware of the chains binding them, will they find the means to free themselves. When citizens see through the means by which their rights have been denied, and the obstacles they face in obtaining remedies, no amount of propaganda will silence them.