



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

Distr.: General
12 September 2023

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

**Report submitted by Sri Lanka under article
29 (1) of the Convention, due in 2018***

[Date received: 23 August 2023]

* The present document is being issued without formal editing.



Abbreviations

CoAs	Certificates of Absence
CED	International Convention for the Protection of all Persons from on Enforced Disappearance
DPCCS	Department of Probation and Child Care Services
GoSL	Government of the Democratic Socialist Republic of Sri Lanka
HRCSL	Human Rights Commission of Sri Lanka
HR & HL	Human Rights & Humanitarian Law Directorate
ICRC	International Committee of the Red Cross
IHL & HR	International Humanitarian Law and Human Rights
IOM	International Organization for Migration
LLRC	Commission of Inquiry on Lessons Learnt and Reconciliation
NCPA	National Child Protection Authority
OMP	Office on Missing Persons
OR	Office of Reparations
PSS	Psychosocial Support
PTA	Prevention of Terrorism Act
PTP	Prosecution of Torture Perpetrators
SLAF	Sri Lanka Air Force
SIU	Special Investigation Unit
UN	United Nations
WGEID	Working Group on Enforced or Involuntary Disappearances

I. Introduction

1. Sri Lanka signed the International Convention for the Protection of All Persons from Enforced Disappearance (CED) on 10th December 2015, and ratified the Convention on 25th May 2016.
2. The decision to sign the Convention was taken by the Government of Sri Lanka in recognition to give effect to the CED; to ensure the right to justice and reparation from enforced disappearance. Sri Lanka subsequently ratified the Convention without reservation.
3. Accordingly, the Government of the Democratic Socialist Republic of Sri Lanka (GoSL) presents its initial report in terms of its obligation under Article 29, paragraph 1 of the CED on the measures taken by the GoSL to fulfil its obligations under the Convention. It sets out developments, achievements and progress relevant to the period from May 2016 to date.
4. The Parliament of Sri Lanka enacted the International Convention for the Protection of all Persons from Enforced Disappearance Act, No. 05 of 2018 dated 21 March 2018. The focal point for the matters coming under CED was initially an Inter-Ministerial Committee. With the enactment of Office on Missing Persons (OMP), Act No. 14 of 2016, all matters relating to CED were vested under the purview of the OMP.

II. Process of Preparation

5. The present report is structured and drafted according to the Committee's guidelines on the form and content of reports under Article 29 to be submitted by State Parties to the Convention, adopted by the Committee at its second session (26–30 March 2012).
6. The report was compiled by the Ministry of Foreign Affairs, in consultation with the Attorney General's Department, Ministry of Defence, Ministry of Justice, Prison Affairs and Constitutional Reforms, Ministry of Public Security, Sri Lanka Police, OMP and the Office for Reparations (OR).

III. General Framework

7. The general framework of Sri Lanka in addressing the crime of enforced disappearances is found in the legislation, supported by an institutional framework to enforce the same. The term "enforced disappearances" was defined in accordance with the Convention.

A. Legislative Framework

Constitutional safeguards

8. Article 13 of the Constitution of Sri Lanka contains safeguards and guarantees relevant to the matters coming under the CED.
9. According to Article 13 of the Fundamental Rights Chapter of the Constitution:
 - “(1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.
 - (2) Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.
 - (3) Any person charged with an offence shall be entitled to be heard, in person or by an attorney-at law, at a fair trial by a competent court.”

Safeguards in Criminal law

10. The International Convention for the Protection of all Persons from Enforced Disappearance Act, No. 05 of 2018.

11. Section 354, 355, 356 and 359 of the Penal Code of Sri Lanka which deals with the offences of abduction; kidnap/abduct in order to murder; kidnapping/abducting with intent to secretly and wrongfully confine a person; wrongfully concealing or keeping in confinement.

12. Section 02 of the Code of Criminal Procedure (Special Provisions) Act, No. 15 of 2005:

“any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty – four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.”.

13. Section 2 of the Code of Criminal Procedure (Amendment) Act, No. 14 of 2021.

14. The provisions of the Prevention of Terrorism Act (PTA) introduced through the Amendment Act, No. 12 of 2022 and the provisions relating thereto with regard to judicial supervision of detention and safeguards contained in Section 9A and 9B.

International treaties and organizations

15. International Convention on Protection of All Persons from Enforced Disappearance.

16. Human Rights Commission of Sri Lanka Act, No. 21 of 1996.

Domestic legislation in line with the Convention

17. Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016, enacted in August 2016. Section 27 of the Act interprets a “missing person” as,

“a person whose fate or whereabouts are reasonably believed to be unknown and which person is reasonably believed to be unaccounted for and missing –

(iii) as an enforced disappearance as defined in the “International Convention on Protection of All Persons from Enforced Disappearances.”.

18. Office for Reparations Act, No. 34 of 2018, provides for the grant of reparations to persons who have suffered loss (i.e., personal injury, death and damage to property) arising from the armed conflict that took place in the Northern and the Eastern Provinces or its aftermath, or due to political unrest or civil disturbances or due to the enforced disappearances.¹ It establishes a regime to deal with past as well as future incidents. According to the text recommended by the Supreme Court, the Office is authorised to recommend reparations for ‘aggrieved persons’ including,

“persons who have suffered damage as a result of loss of life or damage to their person or property...due to an enforced disappearance as defined in the International Convention for the Protection of all Persons from Enforced Disappearance Act, No. 5 of 2018.”.

Administrative provisions

19. The Inspector General of Police (IGP) has issued instructions to all police stations on the conduct of police officers and the procedure to be followed when taking persons into custody (Circular Nos. 2104/2008 and No.2328/2011, and Police Departmental Order No. A20). Such instructions also specify the rights of those arrested. The instructions also specify that a person taken into custody will have the right to be examined by a Judicial Medical

¹ https://reparations.gov.lk/web/index.php?option=com_content&view=article&id=96&Itemid=246&lang=en.

Officer, and to communicate with his or her family. The instructions state that facilities for such examination and communication should be made available by the police officer on duty.

20. On 27th April 2015, the IGP issued instructions (Circular No.2539/15) to all senior police officers to improve the security of persons held in custody. Moreover, instructions were issued to ensure the dignity of all suspects during the time they are held in custody. The instructions also emphasize that disciplinary action should be taken against officers violating procedure.

21. The Rules of Engagement, that are provided to each soldier, and explained in detail periodically by the relevant Field Commander, defines the specific powers vested in them in carrying out their tasks in a just and accountable manner, namely, the power to use force and firearms, to arrest and detain, and to carry out searches or seizure. The need to respect human rights when exercising the said powers is emphasized to the soldiers and every month a Lower Commander forwards a certified report that none of the soldiers under his command have engaged in any actions that lead to violations of human rights. A self-declaration is included in Personal Files of all Officers and Other Ranks stating that they will adhere to the International Humanitarian Law and Human Rights (IHL & HR).

22. The Commanders of the Tri-Forces (Sri Lanka Army – 30 March 2016, Sri Lanka Air Force (SLAF) – 31 March 2016 and Sri Lanka Navy – 28 June 2016) have also issued directions to all branches of security forces prohibiting human rights violations and informing that those responsible will be investigated and punished.

23. On 17 June 2016, the then President issued directions requiring the Security Forces and the Police (i) to ensure that fundamental rights of persons arrested or detained are respected, and that such persons are treated humanely; and (ii) to assist and facilitate the Human Rights Commission of Sri Lanka (HRC SL) to exercise and perform its powers, functions and duties.

24. Police Orders A17 and 20.

25. IGP Circular No. 1733/2002 (Crime Circular 19/2003), 2328/2011 (Crime Circular 22/2011), 2539/2015 (Crime Circular 07/2015), 2747/2023 (Crime Circular 02/2023), 1796/2004 (Admin Circular A1/06/2004).

26. The Gazette (Rules made by the IGP, with the approval of the Minister under section 55 of the Police Ordinance) of the Democratic Socialist Republic of Sri Lanka Extraordinary – No. 1758/36 (18.05.2012).

Institutional Framework

27. Specific institutions with mandates over matters dealt with in the Convention and the enabling domestic legislation relating to enforced disappearance, include the following elements.

Investigation and enforcement

28. Sri Lanka Police is authorised to investigate criminal offences in Sri Lanka, including the offence of enforced disappearances.

29. HRC SL,² has the mandate to inquire into, and investigate complaints regarding infringements or imminent infringements of fundamental rights, and “monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention...”.

30. The OMP,³ established under OMP Act, No. 14 of 2016 has the mandate:

“to clarify the circumstances in which persons went missing and their fate; make recommendations to relevant authorities to ensure non-recurrence; protect the rights and interests of missing and disappeared persons and their relatives; identify avenues

² <https://www.hrcsl.lk>.

³ ompsrilanka.org/en/home.

of redress for missing and disappeared persons; and collate data related to missing and disappeared persons and centralise all available information in a database”.

“In order to conduct its investigations, the OMP has the authority to receive complaints, initiate inquiries and investigate into the whereabouts of a missing or disappeared person; take all necessary steps to investigate cases which include summoning any person to be present before the OMP or produce any document or other thing; accept confidential information or information in camera; apply to a Magistrate’s Court for an order to carry out an excavation or an exhumation and to act as an observer; request any necessary assistance from any state actor; search without warrant any place of detention; and report offences that have been committed to a relevant law enforcement or prosecuting authority.”⁴

31. Since its establishment, the OMP has already begun the process of analysing patterns and contexts of disappearances, especially with respect to incidents that have been substantively documented and are of public importance.

Judiciary

32. The Supreme Court of Sri Lanka is vested with the power to hear appeals with respect to the decisions of the High Court under the Act and other Fundamental Rights petitions.

33. The Court of Appeal jurisdiction with regard to the writ of Habeas Corpus under Article 141 of the Constitution.

34. The High Court in Colombo is authorised to handle the matters related to the Enforced Disappearance Act.

35. Magistrates’ Courts are empowered and required to have, exercise and perform by virtue of the provisions of the Penal Code or of the law relating to criminal procedure.

B. Data Relating to Enforced Disappearances

36. No cases of Enforced Disappearances have been reported between 2017–2023 in Sri Lanka.⁵

37. It is notable that even prior to the formulation of the CED in 2006 and its entry into force in 2010, and Sri Lanka’s ratification of the Convention in 2016, Sri Lanka has had a practice of investigating complaints of disappearances despite there being no formal legal regime for the same.

38. Successive governments have established mechanisms to address the issue of missing persons and enforced disappearances, through several national commissions to receive complaints and recommend action on missing and disappeared of Sri Lanka, as follows.

Presidential Commissions of Inquiry into the Involuntary Removal of Persons⁶ (1991–1993)

39. This was a Commission to inquire the reported cases of “disappearance” which occurred since 11 January 1991, renewed twice more. The three-member Commission was chaired by a retired judge of the Supreme Court of Sri Lanka. The Commission was to inquire the allegations “that persons are being involuntarily removed from their places of residence by persons unknown”, and report on complaints of such alleged removal, evidence available to establish the truth of such allegations, present whereabouts of the missing person’s identity or groups responsible for enforced or involuntary disappearances, establish whether such illegal acts take place because of deficiencies in the present laws relating to law enforcement,

⁴ “Introduction”, Office of Missing Persons – Annual Report – 2020.

⁵ As defined by the Enforced Disappearances Act of 2018.

⁶ Sri Lanka Gazette No. 644/27, 11.01.1991, Gazette No 697/5, 13.01.1992, Gazette No. 751/1, 25.01.1993.

and recommend steps to be taken against offenders and remedial steps necessary to prevent further occurrences of disappearances.

Presidential Commission of Inquiry into the Involuntary Removal or Disappearance of Persons (1995–2000)

40. The then President issued three Presidential Proclamations, appointing three Commissions of Inquiry to look into the disappearance of persons over the course of the conflict.⁷ This established three ‘zonal commissions’ for different geographic parts of Sri Lanka (which functioned from 1995–1997) and one ‘All island’ commission (1998–2000). The three Zonal Commissions were created to investigate cases between 1988–1994. The Commissions’ mandate was to determine the fate of the disappeared and identify appropriate charges against those responsible for the abductions. The reports were made public.⁸

Presidential Commission of Inquiry into Disappeared (Mahanama Tilakaratne Commission) (2006–2007)

41. The Commission was appointed in September 2006 and final report was handed over to the President in 2007.

Commission of Inquiry appointed to investigate and inquire into (16 specific cases) of violations of human rights alleged to have occurred since 1st August 2005 (the Udalgama Commission) (2006–2009)

42. Appointed in November 2006 with the final report being handed over the President in June 2009.

Special Committee to inquire into abductions and the recruitment of children for use in armed conflict (2007)

43. The Committee was headed by the then Secretary to the Ministry of Justice and Law Reform and consisted of state officials, the armed forces and the police.

Commission of Inquiry on Lessons Learnt and Reconciliation (LLRC) (2010)

44. Appointed in terms of Presidential Warrant dated 15 May 2010, with the final report made public in November 2011. This was followed by the establishment of the Inter-Agency Advisory Committee to facilitate the implementation of the LLRC’s interim recommendations.

Presidential Commission of Inquiry to Investigate into Complaints regarding Missing Persons⁹ (Paranagama Commission) (2013)

45. A three-member commission was appointed in terms of Presidential Warrant dated 15 August 2013, to receive complaints and investigate abductions and disappearances in the North and East of Sri Lanka during the period 10 June 1990–19 May 2009 in order to identify the persons responsible and initiate legal proceedings against them. The Paranagama Commission held public hearing in the North and East of Sri Lanka, and heard evidence.

⁷ The terms of reference of the three commissions were published in Gazettes No. 855/18, 855/19 and 855/20 of January 25, 1995.

⁸ www.disappearances.org/news/mainfile.php/reports_srilanka/.

⁹ Sri Lanka Gazette No. 1823/42, 15 August 2013.

Presidential Commission of Inquiry into Complaints of Abductions and Disappearances (2014)¹⁰ (Second Mandate of the Paranagama Commission)

46. The scope of the Commission’s mandate was expanded in 2014, and a legal advisory council was also appointed to assist the Commission comprised of international legal experts. The principal questions raised in the Second Mandate relate to the period identified as the ‘final phase of the war’. The report was presented to the President.¹¹

47. Following Sri Lanka’s formal ratification of the International Convention in 2016, the Government of Sri Lanka established the Office on Missing Persons (OMP) as an independent statutory body under the relevant Act. Section 10 of the OMP provided the Office a specific mandate to:

“collate data related to missing persons obtained by processes presently being carried out, or which were previously carried out, by other institutions, organizations, Government Departments and Commissions of Inquiry and Special Presidential Commission of Inquiry and centralize all available data within the database established under this Act.”

48. Accordingly, OMP has undertaken steps necessary to centralize all available data.

49. The records of the past commissions of inquiry are stored at the Department of National Archives under Presidential seal for a period of 30 years and the DNA is responsible for the custody, physical preservation and use of records. In April 2018 the Secretary to the President granted approval to the OMP to access and digitise the relevant records and approval was re-issued in January 2019. On 22nd July 2019 the OMP entered into a MOU with the DNA to digitise records of select Commissions of Inquiry relating to missing and disappeared persons and began the process of consolidating existing records.

50. In March 2018, the Ministry of National Integration and Reconciliation and the Presidential Secretariat forwarded 14,700 files relating to missing and disappeared persons. To the OMP.

51. Since its establishment the OMP has also received 2,932 complaints from civilian sources and 3,742 files pertaining to disappeared from Sri Lanka Security Forces.

52. Following the removal of duplicated files and those declared Missing in Action, the number of complaint files to be processed by the OMP is 14,988. These have been categorized as follows for ease of processing:

- Phase I - Between 2011–2021 and 2001–2010;
- Phase II - Between 1991–2000 and 1981–1990;
- Phase III - Between 1970–1980 and before 1969.

53. Of these incidences of those missing and disappeared, the breakdown by districts and province of those relating to Phase I is at Tables 1 and 2:

Table 1

Provincial breakdown of Phase I files, OMP, August 2021

<i>Province</i>	<i>No of cases</i>	<i>Percentage</i>
Northern	3 656	60.68
Eastern	1 897	31.49
North Central	92	1.53
Western	89	1.48
Southern	78	1.29
North Western	75	1.24
Central	59	0.98

¹⁰ Sri Lanka Gazette No. 1871/18, 15 July 2014.

¹¹ ompsrilanka.org/storage/app/uploads/public/5fa/b73/2c2/5fab732c23edc078826526.pdf.

<i>Province</i>	<i>No of cases</i>	<i>Percentage</i>
Sabaragamuwa	51	0.85
Uva	28	0.46
Total	6 025	

Table 2
District level breakdown of Phase I files, OMP, August 2021

<i>District</i>	<i>No. of files</i>
Nuwara Eliya	7
Badulla	4
Moneragala	24
Puttalam	28
Colombo	33
Kegalle	15
Kalutara	24
Mannar	361
Gampaha	32
Ratnapura	36
Polonnaruwa	67
Ampara	107
Hambanthota	11
Kandy	27
Anuradhapura	25
Kilinochchi	948
Galle	40
Matara	27
Matale	25
Mulaitivu	461
Jaffna	1 485
Vavuniya	401
Kurunegala	47
Batticaloa	1 214
Trincomalee	571
Total	6 025

54. The Working Group on Enforced or Involuntary Disappearances (WGEID) has directed 12,664 reports received by them on missing and disappeared persons from Sri Lanka to the Foreign Ministry of Sri Lanka, which were then forwarded to the OMP. These cases include 6,066 ‘unclarified’ reports and 6,598 ‘clarified’ reports. The OMP has begun the process of cross verifying, and reviewing the reports by identifying instances where the fate of the disappeared person has since been established and by cross-checking individual files for duplication.

55. The GoSL has conducted regular consultations with national institutions for the protection and promotion of human rights, families of victims’ organisations, human rights defenders working on the issue of enforced disappearance, non-governmental organisations and other stakeholders. The GoSL has also held consultations in the process of formulating the National Report for Sri Lanka’s Universal Periodic Reviews and the State Party Report with respect to the International Covenant on Civil and Political Rights. These consultations

provided an opportunity for families of victims of enforced disappearance and human rights defenders working on the issue to engage in treaty-reporting procedures, and to share their experiences, observations and concerns with the GoSL. The Personal Data Protection Act, No. 9 of 2022 was given consideration during the process.

IV. Implementation of Convention

Article 1

56. Sri Lanka recognizes the non-derogability of the prohibition of enforced disappearance. Sri Lanka's laws do not provide for the invocation of any exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, as a justification for enforced disappearance.

57. Legislation and practices concerning terrorism, emergency situations, national security or other grounds do not have an impact on the effective implementation of this prohibition.

58. This is addressed by the Enforced Disappearance Act of 2018, wherein Section 23 states that:

“The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.”

Article 2

59. Section 3 of the Enforced Disappearance Act defines the offence of ‘enforced disappearance’, encapsulating all elements of the definition of ‘enforced disappearance’ found in article 2 of the Convention.

60. It provides for multiple actors who would be found guilty of the offence of enforced disappearance:

- (a) A public officer or acting in an official capacity, or any person acting with the authorization, support or acquiescence of the State;
- (b) Any person who wrongfully confines, abducts, kidnaps or deprive liberty;
- (c) A superior who knows, or consciously disregards information which clearly indicated, that subordinates under the effective authority and control were committing or about to commit, and fails to take all necessary and reasonable measures to prevent.

61. Section 3 also states the other elements of the offence which constitute the offence, as follows:

- Refuses to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty;
- Conceals the fate;
- Fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such person.

62. Moreover, the Act dispenses with the requirement under the Convention that the person is placed ‘outside the protection of the law’ in order for an enforced disappearance to take place, with a view to avoiding any doubt that the scope of the offence of enforced disappearance includes situations in which a person is held in official custody, but whose custody is denied by the relevant authorities.

Article 3

63. Section 5 of the Act states that, every offence under the Enforced Disappearance Act is considered a ‘cognizable offence’ and a ‘non-bailable offence’, within the meaning, and for the purposes of the Code of Criminal Procedure Act, No. 15 of 1979.

64. Section 6 of the Enforced Disappearance Act vests the High Court of Sri Lanka in Colombo with exclusive jurisdiction to try offences under the Act. Thus no other court, including a military court or tribunal, may exercise jurisdiction to try the offence of enforced disappearance.

Article 4

65. In Sri Lanka the crime of enforced disappearance has been established as an autonomous offence in domestic law consistent with the definition in Article 2 of the Convention, since the adoption of Enforced Disappearance Act No. 5 of 2018.

66. An offence under this Act is distinct from other related offences such as:

- ‘Wrongful confinement’, ‘kidnapping’ and ‘abduction’, which are already criminalised in sections 331, 350, 351, 352 and 353 of the Penal Code, No. 2 of 1883;
- ‘Torture’ under the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

Article 5

67. The GoSL has not posited any reservations with regard to Article 5 of the Convention.

68. With regard to the obligation to codify the “widespread or systematic practice of enforced disappearance as a crime against humanity”, it is noted that the Intersessional Open-ended Working Group to elaborate a Draft Legally Binding normative Instrument for the Protection of All Persons from Enforced Disappearance observed that ‘article 5 did not create any additional obligation on States to accede to particular instruments or amend their domestic legislation’ (E/CN.4/2006/57, 2 February 2006, para. 106).

69. Further, Sri Lanka’s Constitution (Art 13(6) provides that no persons shall be subjected to the retroactive application of criminal law. However, an exception can apply where a person commits an act or omission, which at the time it was committed violated a ‘general principle of law recognized by the community of nations’.

Article 6

70. With regard to establishing a regime of criminal responsibility, including superior responsibility, consistent with article 6(1)(b) of the Convention, Section 3(3) of the Enforced Disappearance Act provides that:

“A superior who:

(a) Knows, or consciously disregards information which clearly indicated, that subordinates under the effective authority and control of such superior were committing or about to commit an enforced disappearance;

(b) Exercises effective responsibility for and control over activities which were concerned with the offence of enforced disappearance; and

(c) Fails to take all necessary and reasonable measures within his power to prevent or repress the commission of an enforced disappearance or to submit the matter to a law enforcement authority for investigation and prosecution,

shall be guilty of the offence of enforced disappearance.”

71. In order to sanction participation in acts of enforced disappearance, Section 4(1) of the Enforced Disappearance Act provides that “any person who aids or abets the commission of any offence set out in section 3, or conspires or attempts to commit any offence set out in section 3, shall be guilty of an offence under this Act”. It also provides that such a person shall be liable to be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees, and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

72. The inclusion of conspiracy to commit the offence of enforced disappearance ensures that a group of persons may be prosecuted for the commission of an enforced disappearance even where a person may not by him or herself satisfy all constituent elements of the offence. For example, one agent of the state may arrest a person, and then conspire with another agent of the state for such arrest to be denied by such other agent. In such a situation, the first agent is not directly involved in the second act (i.e., the denial), and the second agent is not directly involved in the first act (i.e., the arrest). However, the two agents together may be liable to be prosecuted under section 4(1) for conspiracy to commit an enforced disappearance.

73. Section 100 of the Penal Code provides for abetting and Section 113A of the Penal Code defines conspiracy.

74. The Enforced Disappearance Act does not permit any notion of ‘superior orders’ or ‘due obedience’ being invoked as a potential justification for the commission of an enforced disappearance. Section 25 of the Act defines “effective authority and control” as the power to issue orders to subordinates and the capacity to ensure compliance with such orders – which potentially includes both de jure and de facto control of a superior.

75. Even in the event that any other law may be interpreted as providing for the immunity of officials acting in ‘good faith’, the Enforced Disappearance Act will prevail over such law by virtue of section 23 of the Act. For example, the Act will prevail over section 9 of the Public Security Ordinance, No. 25 of 1947, which purportedly affords any person acting in accordance with any Emergency Regulation promulgated under the Ordinance immunity from criminal prosecution or civil action.

76. There is also a body of jurisprudence in Sri Lankan courts, where the defence of “superiors’ orders” has been rejected. For example:

(a) In *Wijesuriya v. The State* (1973), courts held that a subordinate “must exercise his judgment and he must see that this is a manifestly and obviously illegal order and therefore refuses to carry it out, and if he does carry out such an order then he will be doing it at his own peril and he would be responsible for all the criminal consequences”;¹²

(b) In *Galagamage Indrawansa Kumarasiri & 3 Others v. W.M.M. Kumarihami*, Chief Registrar of the High Court of Colombo & Another (2014), the Supreme Court dismissed the defence of “Superior Orders” as averred by the accused, and held that “although subordinates are under no obligation to question the order of their superior officer, when an order is universally known to be unlawful, following such an order would be against the law.”¹³

77. In doing so, courts have referred to similar cases in India, South Africa and Germany.

78. Courts have also upheld the choice of subordinates who have opposed orders to commit unlawful acts.

79. In *S Wickramanayake & another v. IGP & 4 others* (2019),¹⁴ Supreme Court held that the “Petitioners were entitled in law to refuse to carry out the illegal instructions they had received... It necessarily follows that Respondents are not entitled in law to allege insubordination on that account”.

¹² *Wijesuriya v. The State* (1973) 77 NLR 25, *Perera v. Balapatabendi, Secretary to the President and Others* [2005] 1 Sri.L.R. 185.

¹³ SC TAB Appeal 02/2012 (No. 5247 / 2010), decided on 2nd April 2014 available at http://www.supremecourt.lk/images/documents/sc_tab_appeal_02_2012.pdf.

¹⁴ SC (FR) Application No. 81/2020, decided on 27 August 2019.

80. Thus, both in terms of the Enforced Disappearance Act of 2018, which prevails over all other laws, and in terms of the practice of the courts, ‘superior orders’ or ‘due obedience’ cannot be invoked as a potential justification for the commission of an enforced disappearance.

Article 7

81. Taking into account the seriousness of the crime, the Enforced Disappearance Act provides for penalties for the offence of enforced disappearance in Section 3, setting out the penalties for the offence as; liable to be punished with imprisonment for a term not exceeding twenty years, liable to pay a fine not exceeding one million rupees, and liable to pay compensation not less than five hundred thousand rupees to a victim.

82. The Enforced Disappearance Act provides for an absolute prohibition on enforced disappearance and does not permit any justifications or mitigating circumstances with respect to the commission of an enforced disappearance.

Article 8

83. As per Section 456 of the Code of Criminal Procedure Act No. 16 of 1979 (as amended), the right of prosecution for any crime or offence, other than murder or treason, shall be ‘barred by the lapse of twenty years from the time when the crime or offence shall have been committed.’ Thus, there is a general statute of limitations in instituting criminal proceedings in Sri Lanka.

84. The Enforced Disappearance Act does not expressly recognize the crime of enforced disappearance as a continuous crime. However, where a person is continuously deprived of liberty, such as through detention or some other form of confinement without such person’s consent, the offence of enforced disappearance shall be of a continuing nature, so long as there is refusal to acknowledge such deprivation of liberty. In such an event, the statute of limitations shall not be applicable until such person is no longer deprived of liberty, or until the deprivation of liberty is acknowledged, in which case the offence of enforced disappearance ceases.

85. In terms of Section 20 of the Enforced Disappearance Act, “any person with a legitimate interest” can petition the High Court seeking the enforcement of certain operative sections of the Act, and to seek relief or redress from the Court. The jurisdiction of the High Court by any person with legitimate interest within three months of the date on which non-enforcement of certain sections of the Act (including non-disclosure of information) “*becomes known to such person*”. By this broad application, the Act circumvents the application of prescription in enforced disappearances cases.

Article 9

86. According to section 6(1) of the Enforced Disappearance Act, the High Court of Sri Lanka holden in Colombo, or the High Court established under Article 154P of the Constitution, for the Western Province holden in Colombo, has exclusive jurisdiction over any enforced disappearance committed within the territorial jurisdiction of Sri Lanka.

87. Moreover, under section 6(2) of the Act, the Court has jurisdiction where:

- (a) The offender whether he is a citizen of Sri Lanka or not is present in any territory under the jurisdiction of Sri Lanka;
- (b) The person alleged to have committed the offence is a citizen of Sri Lanka, or a national of another State which is a party to the Convention, or by a stateless person who has his habitual residence in Sri Lanka; or
- (c) Such act is committed against, or on board:
 - (i) a ship flying the flag of Sri Lanka; or

(ii) an aircraft registered in Sri Lanka at the time of the commission of the offence;
or

(d) The person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka.

88. The Act sets out Sri Lanka's obligation to extradite or prosecute offenders of enforced disappearance, and to offer mutual legal assistance to Convention States to ensure the investigation and prosecution of such offenders. In relation to mutual legal assistance, Sri Lanka's Mutual Legal Assistance in Criminal Matters Acts No. 25 of 2002, amended by Act No. 24 of 2018, provides for cooperation in criminal cases, including in enforced disappearances.

89. Section 10 and 12 of the Act seeks to expand the Extradition Law, No. 8 of 1977 and provides for extradition in cases where the country to which the individual is being extradited to is a Convention State with which Sri Lanka has prior extradition arrangements. Furthermore, Section 11 of the Act holds that the Convention would be applicable in situations concerning Convention States with which Sri Lanka does not have existing extradition arrangements.

90. In the event of a request from a State Party for extradition a person suspected of enforced disappearance, section 8 of the Act obliges the GoSL to notify the Government of the requesting State of the measures that the GoSL has taken, or proposes to take, for the prosecution or extradition of that person.

Article 10

91. Where a person who is not a citizen of Sri Lanka is arrested for an offence under the Enforced Disappearance Act, section 7 of the Act guarantees that such person shall be entitled:

(a) To communicate without delay, with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights, or if he is a stateless person, with the nearest appropriate representative of the State in the territory of which he was habitually resident;

(b) To be visited by a representative of that State; and

(d) Be informed of his rights under paragraphs (a) and (b).

92. Article 36 of the Vienna Convention on Consular Relations of 24 April 1963, to which Sri Lanka is a State Party since 2006 guarantees that prisoners can communicate with the competent representative of their State and obliges States to inform all foreign national detainees, without delay, of their right to contact their consular representatives and forward all communication addressed to the consular post by the detainee. As per the Convention, Consular officials must be authorized to visit nationals of the State they represent, to converse and correspond with them and to arrange for their legal representation, if so requested by a detainee. These obligations are adhered to by the Sri Lanka Police in coordination with the Sri Lanka Foreign Ministry.

Article 11

93. The Act has put in place the framework enabling national courts to exercise universal jurisdiction over the offence of enforced disappearance, particularly under Section 6(2) of the Act which states that:

“Where an act constituting an Offence under this Act is committed outside Sri Lanka, the High Court. shall have the jurisdiction to try such offence as if it were committed within Sri Lanka, if,

(a) The offender whether he is a citizen of Sri Lanka or not, is present in any territory under the jurisdiction of Sri Lanka;

(b) The person alleged to have committed the offence is a citizen of Sri Lanka, or a national of another State which is a party to this Convention, or by a stateless person who has his habitual residence in Sri Lanka.”

94. The only exception to this general obligation arises in the case of extradition of the said suspect to another State with jurisdiction to investigate and prosecute the offence.

95. The standard of evidence for prosecution and conviction of any alleged offender of enforced disappearance found within the territory of Sri Lanka is no less stringent than those applied with respect to any other prosecution and conviction with respect to enforced disappearance over which Sri Lanka has jurisdiction. According to numerous judicial pronouncements in Sri Lanka including, *Director General, Commission to Investigate Allegations of Bribery or Corruption v Kalinga Padmatillake*,¹⁵ the standard of proof for all criminal cases in Sri Lanka is proof ‘beyond reasonable doubt’.

96. Moreover, all persons – whether they be Sri Lankan citizens or not – investigated and prosecuted under the Enforced Disappearance Act are entitled to all rights guaranteed under articles 12 and 13 of the Sri Lankan Constitution, including the right to equality and equal protection of the law, the freedom from arbitrary arrest, detention and punishment, the right to a fair trial, and the right to be presumed innocent until proven guilty.

97. The Code of Criminal Procedure Act No. 15 of 1979, as amended, with its protections and rights of the accused applies to the accused in a case of enforced disappearance, including provisions on right to legal counsel.

98. The Sri Lanka Police, with its numerous branches, are competent to investigate those accused of enforced disappearance, while the Attorney General’s department are competent to prosecute the cases.

99. On 2 January 2012, a five-member Court of Inquiry was appointed by virtue of the powers, vested in the Army Commander by Regulation 4 of the Courts of Inquiry Regulations, read with the Regulation 2 of the Army Disciplinary Regulations, to inquire into the observations, made by the Lessons Learnt and Reconciliation Commission (LLRC)¹⁶. This Court of Inquiry served as an initial fact-finding inquiry, akin to a non-summary inquiry by a Magistrate. If there was a prima facie case disclosed against any person from the evidence led before the Court of Inquiry, a General Court Martial, is convened to try the alleged offenders. A General Court Martial has the jurisdiction that is identical to a High Court Trial-at-Bar and can award any sentence.

Article 12

100. The Enforced Disappearance Act guarantees the right of any person who alleges that a person has disappeared, to report the facts and to have the case promptly and impartially investigated. Section 14(1) of the Act provides that:

“every victim and relative of a victim shall have the right to know the truth regarding the circumstances of an enforced disappearance, the progress and results of the investigation as are carried out by the law enforcement authorities, and the fate of the disappeared person.”

101. Section 14(3) of the Act obliges the Sri Lankan State to investigate where there are “reasonable grounds for believing” that there is a case of enforced disappearance, even in the absence of a formal complaint.

102. Section 17(1) of the Act makes the following acts punishable offences, thereby prohibiting interferences with investigations:

(a) [Interfering] with the conduct of an investigation;

¹⁵ SC Appeal No. 99/2007.

¹⁶ <https://www.army.lk/news/army-commander-appointed-court-inquiry-probing-llrc-report-observations-progress-0>.

(b) [Influencing] the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their attorney-at-law or persons participating in the investigation;

(c) Being the officer responsible for the official register, intentionally [failing] to record the deprivation of liberty of any person, or [recording] any information which he or she knew to be inaccurate;

(d) [Refusing] to provide information on the deprivation of liberty of a person, or [providing] inaccurate information, notwithstanding the fact that legal requirements for providing such information have been met.

103. The following independent and impartial authorities are vested with the power to look into matters of Missing / Disappeared persons:

- HRCSL – based on the human rights violation of the victim;
- OMP – based on Section 10(1) of the OMP Act mandates the OMP, *inter alia*, to:
 - (a) search for and trace missing persons and identify appropriate mechanisms for the same and to clarify the circumstances in which such persons went missing;
 - (b) make recommendations to the relevant authorities towards addressing the incidence of missing persons;
 - (c) protect the rights and interests of missing persons and their relatives as provided for in this Act;
 - (d) identify avenues of redress to which missing persons and relatives of missing persons are entitled and to inform the missing person (if found alive) or relative of such missing person of same;
 - (e) collate data related to missing persons obtained by processes presently being carried out, or which were previously carried out, by other institutions, organizations, Government Departments and Commissions of Inquiry and Special Presidential Commission of Inquiry and centralize all available data within the database established under this Act.

104. In addition to the explicit mandate of the OMP to clarify circumstances in which a person went missing, the OMP also has specific powers to make rules and develop guidelines in order to operationalize its mandate (section 11(b) of the Act). Moreover, sections 12(a) and (b) of the OMP Act provides the OMP with the following investigative powers:

(a) To receive, from any relative of a missing person, or any other person or organization, complaints relating to missing persons, irrespective of when such person may have become a missing person;

(b) To initiate an inquiry and/or investigation into the whereabouts and/or circumstances of disappearance of a missing person pursuant to a complaint made to the OMP or on the basis of information received from previously established Commissions of Inquiry, Commissions on missing persons or Commissions which have inquired into allegations relating to disappearances or missing persons.

105. According to section 12(i) of the OMP Act, where it appears to the OMP that:

“an offence within the meaning of the Penal Code or any other law [including the Enforced Disappearance Act], has been committed, that warrants investigation, the OMP may, after consultation with such relatives of the missing person as it deems fit...report the same to the relevant law enforcement or prosecuting authority.”

106. Examples of the investigative function of the OMP:

- It exercised its authority to apply to the Magistrate Court to act as an observer at excavations and exhumations of the suspected grave site at the Sathosa building in Mannar town (Case No B/232/2018);

- The OMP provided multiple forms support to the investigations into the suspected mass grave site in Mannar.¹⁷ Skeletal remains of 325 bodies were recovered during the investigation carried out for 155 days. Further the OMP submitted guidelines for the Hon. Mannar Magistrate's consideration during the selection of the bone and teeth samples for radio carbon dating and by observing the selection process, with a view to ensuring the chain of custody of the samples;
- Further, the OMP was permitted, and acted as an Observer in other judicial proceedings investigating human remains (Case No. AR/808/19 and Case No. AR/503/20 before the Magistrate's Court of Mullaitivu; and Case No. B/542/20 and Case No. B/1053/20 before the Magistrate's Court of Kilinochchi. The OMP has also made an intervention in Case No. B172/14 before the Magistrate's Court of Kalawanchikudi. In each of these cases the OMP strongly advocated that a multi-disciplinary approach be adopted to the investigation, that includes an analysis of the human remains and other evidence based on forensic archaeology and forensic anthropology. Further that such efforts should be complemented with an investigation into the history of the local area which established events that may have affected the site;
- The OMP has further recommended that appropriate steps be adopted to secure the chain of custody of all evidence generated during the investigation, and that findings of all members of the investigation team including Police, Police Scene of Crime officers and the Judicial Medical Officer, be submitted to the Magistrate to be placed on record.

107. Mechanism for protection of the complainants, their representatives, witnesses, and other persons relating to a case of enforced disappearance: Following the establishment of the National Authority for the Protection of Victims of Crime and Witnesses in 2016, the provision of redress and services to victims and witnesses as per the Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 has commenced. This Act offers protection to all witnesses of crimes including those falling within the scope of the Enforced Disappearance Act. The Policy and Programme Division, Legal Division and Operations division of the Authority have been set up and are functional, while recruitment is ongoing for the Protection Division. The special Police Division set up under the Act has been in operation since November 2016. In compliance with Code of Criminal Procedure, the new draft of the Protection of Victims of Crime and Witnesses Bill and the present Act, testimony by audio visual linkage is provided for from a remote location within or outside Sri Lanka.

108. Training of officers to handle cases of enforced disappearances – The Authority, in collaboration with the United Nations Development Programme, has conducted capacity building programmes targeting all members of Sri Lanka Police, judges, Child Care Officers and Judicial Medical Officers, with a view to ensuring the effective implementation of the Act.

109. In addition, as per section 13(1) (g) of the OMP Act, the OMP has the authority to develop and enforce a system of victim and witness protection. Accordingly, the Protection Unit of the OMP is further charged with ensuring safety and security of OMP staff and its premises; and maintaining a track record of newly reported cases.

Article 13

110. According to section 13 of the Enforced Disappearance Act, the offence of enforced disappearance shall not be deemed to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, for the purposes of the extradition of any person accused or convicted of any such offence.

¹⁷ Office on Missing Persons, Press Release 'Office on Missing Persons acts as an observer when handing over bone samples from the Mannar mass grave to an international laboratory for carbon dating', 30 January 2019, available at <https://www.facebook.com/ompsrilanka/photos/a.2177156629210232/2232615643664330/?type=3&theater>.

111. Section 10 of the Act provides that where an extradition arrangement exists between Sri Lanka and another State party to the Convention - the arrangement 'shall be deemed for the purposes of the Extradition Law, No. 8 of 1977, to include provision for the extradition in respect of the offences under the Enforced Disappearance Act'.

112. Section 11 of the Act stipulates that where there is no extradition agreement – the Act authorises the Minister to whom the subject and functions of the Enforced Disappearance Act is assigned, by Order published in the Gazette, to treat the Convention as an extradition arrangement between the GoSL and another Convention State. Such arrangement would be *inter alia* the purpose of extraditing a person suspected or convicted of an enforced disappearance.

113. Moreover, section 12 of the Act amends the schedule to the Extradition Law, No. 8 of 1977.

114. Sri Lanka has so far entered into nine (9) bilateral extradition agreements.

Articles 14 and 15

115. Sri Lanka has entered into 12 bilateral Mutual Legal Assistance agreements and is also a signatory to the South Asian Association for Regional Cooperation Convention on Mutual Assistance in Criminal matters.

116. Section 9(1) of the Enforced Disappearance Act provides that the provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall be applicable with respect to cooperation between the GoSL and other States Parties who are: (a) Commonwealth countries or (b) Non-Commonwealth countries with which the GoSL has entered into an agreement.

117. If a country seeking mutual legal assistance does not fall into either category at (a) and (b) above, the Mutual Legal Assistance (Amendment) Act No. 24 of 2018, can be utilized where Section 2 states that the provisions of the Act shall apply to:

(a) A country which has not entered into any agreement with Sri Lanka, where the Minister may determine that it is in the best interests of the sovereign nations that Sri Lanka extends and obtains assistance on the basis of reciprocity;

(b) An intergovernmental organization combating corruption, money laundering or financing of terrorism, on such terms and conditions as may be necessary and on the assurance of reciprocity.

118. Moreover, section 9(2) of the Act provides that the GoSL may afford all such assistance to another State Party, as may be necessary for the investigation and prosecution of an offence under sections 3 or 4 of the Act to the extent required for the discharge of its obligations under the Convention (including assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).

Article 16

119. Section 18(1) of the Enforced Disappearance Act stipulates that:

“no person shall be expelled, returned, surrendered or extradited to another State where there are substantial grounds for believing that such person would be in danger of being subjected to enforced disappearance.”

120. Moreover, section 18(2) provides that the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law shall be taken into account, when determining whether there are substantial grounds for believing that a person is in danger of being subjected to enforced disappearance.

121. Under section 18(3) of the Act, the Minister to whom the subject and functions of the Act are assigned may make regulations prescribing the criteria upon which a person may be expelled, returned, surrendered or extradited to another State.

122. A decision made with respect to the extradition, expulsion or removal of a person can be challenged by any person under the fundamental rights jurisdiction of the Supreme Court of Sri Lanka or the writ jurisdiction of the Court of Appeal.

Article 17

123. Relevant interpretations in this regard are specified in Section 25 of the Act, which defines:

“‘secret detention’ as ‘circumstances in which a person is held in a place that is not a place of detention authorized by or under any written law, and where the whereabouts or fate of the person are not known to his relatives or others’;

‘deprivation of liberty’ as ‘the confinement of a person to a particular place, where such person does not consent to that confinement.’”.

124. Section 15(1) of the Enforced Disappearances Act explicitly prohibits secret detention. Thus, all detainees in Sri Lanka are accordingly required to be held in officially recognised places in order to be easily located and protected by law. No secret detention centres remain in Sri Lanka.

125. Section 15(4) of the Enforced Disappearances Act requires law enforcement authorities to ‘assure the compilation and maintenance of up-to-date official registers or records of persons deprived of liberty, which shall be promptly made available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law.’ Such registers or records shall contain:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Information relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and
- (h) The date and time of release or transfer to another place of deprivation of liberty, the destination of the place of deprivation of liberty to which a person is transferred, and the authority responsible for the transfer.

126. Access to family, relatives and legal counsel is guaranteed from the commencement of any deprivation of liberty:

- Section 15(2) of the Act meanwhile stipulates that, ‘any person deprived of liberty shall have the right to communicate with and be visited by his relatives, attorney-at-law or any other person of his choice, subject only to the conditions established by written law.’;
- Section 16(1) of the Enforced Disappearance Act provides that any relative of a person deprived of liberty, the representative of a person deprived of liberty or an attorney-at-law of a person deprived of liberty, shall have the right to obtain the following information:

- (a) the person or authority that ordered the deprivation of liberty;

- (b) the date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
- (c) the authority responsible for supervising the deprivation of liberty;
- (d) the whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- (e) the date, time and place of release;
- (f) information relating to the state of health of the person deprived of liberty; and
- (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

127. Access to places of detention by government authorities:

- *Courts:* By an amendment to the Code of Criminal Procedure (1979), it has been made the duty of every Magistrate to visit every police station situated within the judicial division in respect of which he is appointed, at least once in every month to ensure that the suspects under police custody at such police stations are protected to the extent provided for in the Convention against Torture and other cruel, inhuman or Degrading Treatment or Punishment Act No 22 of 1994;
- *Law enforcement:* Section 15(3) of the Enforced Disappearance Act authorises law enforcement authorities to have access to the places where persons are deprived of liberty.

128. Guarantees of access to places of detention by independent bodies:

- The HRCSL has access to all places of detention and detainees at all stages of their detention, as well as to speak to them privately and freely. Section 15(3) of the Act authorises the HRCSL to have access to the places where persons are deprived of liberty. The Commission is also mandated under section 11(d) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996 to ‘monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention.’;
- The OMP is empowered under section 12(f) of the OMP Act to authorise an officer of the OMP, to ‘enter without warrant, at any time any place of detention, police station, prison or any other place in which any person is suspected to be detained, or is suspected to have previously been detained in, whether by judicial order or otherwise and make such examinations therein or make such inquiries from any person found therein, to ascertain the conditions of detention and retain any documents or objects, as may be necessary.’;
- The GoSL entered into an agreement with the International Committee of the Red Cross (ICRC) on 7th June 2018 to *inter alia* ensure that ICRC gains access to all detainees at all stages of their detention, and to places of detention, and to speak privately and freely to such detainees. This agreement is expected to strengthen independent monitoring of detention conditions and ensure further safeguards against ill treatment of persons held in custody.

129. Sri Lanka also acceded to the Optional Protocol to the Convention against Torture on 5th December 2017, and the said treaty entered into force for Sri Lanka on 4th January 2018. Under this treaty, Sri Lanka has undertaken international obligations to designate an independent national institution to function as the National Preventive Mechanism to *inter alia* ‘regularly examine the treatment of the persons deprived of their liberty in places of detention.’ HRCSL has been designated as the National Preventive Mechanism for the purposes of implementing this treaty. Pursuant to the accession, the United Nations (UN) Sub-Committee on Torture visited Sri Lanka in April 2019.

130. A person has a range of remedies in the event that he or she wishes to challenge the lawfulness of a detention. For example,

- He or she may submit a fundamental rights application to the Supreme Court of Sri Lanka in terms of article 126 of the Constitution, or submit a writ of *habeas corpus* to the Court of Appeal under article 141 of the Constitution;
- As per section 20(3) of the Enforced Disappearances Act, the High Court may, at any stage of the proceeding relating to a petition under this Act, refer such matter to the HRCSL for an inquiry and report;
- As per section 20(5) under this Act, any person aggrieved by an order made by the High Court has the right of appeal to the Supreme Court against such order.

Article 18

131. Pursuant to section 20(1) of the Enforced Disappearance Act, “any person with a legitimate interest” is empowered to petition the High Court seeking the enforcement of specific provisions of the Act and appropriate remedies.

132. Moreover, section 16(2) of the Act provides that any relative of a person deprived of liberty, the representative of a person deprived of liberty or an attorney-at-law of a person deprived of liberty, as well as persons participating in the investigation of an alleged offence under the Act, shall be protected from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

133. Moreover, section 16(3) of the Act provides that any relative of a person deprived of liberty, the representative of a person deprived of liberty or an attorney-at-law of a person deprived of liberty shall have the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in section 16(1) of the Act, section, and that such right to a remedy shall not be suspended or restricted in any circumstances.

134. Following recommendations of the WGEID, the Inspector General of Police has issued directives to all senior police officers and officers in charge of police stations to strictly adhere to the following in respect of relatives of missing persons:

- Ensure non-discrimination for relatives of missing persons during law enforcement;
- Safeguard their freedom against any form of harassment;
- Follow the same formalities as those followed for the general public;
- Act in terms of the general law with regard to any offences or crimes;
- Ensure their right to live freely and peacefully without any threats, intimidation or sexual harassment;
- Investigate without delay into complaints of any acts that threaten their safety and security.

135. The relevant circular also states that disciplinary action and criminal action (in the event of acts of a criminal nature) will be taken against all police officers who are found to be in violation of the above directives. A copy of the circular is at Annex ‘A’.

Article 19

136. Section 19 of the Enforced Disappearance Act provides for privacy and data protection in that:

“personal information, including medical and genetic data, which is collected or transmitted within the framework of the search for a disappeared person, shall not be used or made available for purposes other than the search for the disappeared person, and shall not be collected, processed, used or stored in a manner that infringes or has the effect of infringing the fundamental rights and freedoms or dignity of a person.”

Article 20

137. The Enforced Disappearance Act does not authorise the restriction of access to information on persons deprived of their liberty to persons with a legitimate interest, such as the relatives of the person deprived of liberty, their representatives or their counsel.

138. In addition, the Right to Information Act, No. 12 of 2016 also provides for the right to access information with regard to a person deprived of liberty. Section 25(3) of the Right to Information Act provides that:

“where the request for information concerns the life and personal liberty of the citizen, the response to it shall be made within forty-eight hours of the receipt of the request.”

139. A person with a legitimate interest has the right to a prompt and effective judicial remedy to obtain information without delay under section 20(1) of the Enforced Disappearance Act. A petition may be submitted to the High Court within three months of the date on which the non-enforcement of sections 16 of the Act becomes known to the petitioner.

Article 21

140. Section 15(4)(h) of the Enforced Disappearance Act makes provision for the obligations concerning deprivation of liberty as follows:

15. (4)(h) the date and time of release or transfer to another place of deprivation of liberty, the destination of the place of deprivation of liberty to which a person is transferred, and the authority responsible for the transfer.

141. Section 16(1)(c) and 16(1)(e) of the Enforced Disappearance Act, the rights of relatives, representatives and attorneys-at-law provide as follows:

16. (1)(c) “the authority responsible for supervising the deprivation of liberty”;

16. (1)(e) the date, time and place of release.

Article 22

142. The Enforced Disappearance Act stipulates criminal sanctions for failure to record accurate information and refusal to provide information on the deprivation of liberty. Section 17(1) of the Act holds that an offence is committed if,

(a) Being the officer responsible for the official register, intentionally fails to record the deprivation of liberty of a person, or records any information which he knew to be inaccurate;

(b) Refuses to provide information on the deprivation of liberty of a person, or provides inaccurate information, notwithstanding the fact that legal requirements for providing such information have been met.

143. As per Section 17(2), such a person can be punished following a trial at the High Court with imprisonment for a term not exceeding seven years and a fine not exceeding five hundred thousand rupees.

Article 23

144. All security forces have Directorates of Human Rights and International Humanitarian Law established internally for in-depth training on human rights and international humanitarian law. Assistance for training programmes within the directorates was obtained from international organisations such as the ICRC.

145. The Sri Lanka Army has initiated numerous activities, programmes within the Army to enhance the knowledge of the troops on Human Rights. With the aim of ensuring that

Human Rights & International Humanitarian Law are well adhered to within the Sri Lanka Army during conflict situations:

- The establishment of the Human Rights & Humanitarian Law Directorate (HR & HL) in the Sri Lanka Army, as the first ever HR & HL Directorate in the South Asian Region in 1997;
- The Directorate is responsible for monitoring all Human Rights related activities within the Army. Accordingly, the Sri Lanka Army has established Human Rights Cells (412 Cells) as a reporting procedure to the Directorate of HR & HL in each station to monitor and prevent Human Rights violations and to implement necessary actions;
- The Directorate conducts 2 x Basic and 2 x Advance courses on HR & HL annually, to train Tri Forces personnel and each course curriculum consists of the separate lectures on International and Domestic Legal Framework pertaining to Arrest and Detention. Further, course content covers all the main International Conventions;
- To support the United Nations Vetting Process, the Sri Lanka Army through the Directorate of HR & HL is providing recommendations to the HRCSL on military personnel, if there is any HR violation;
- All initial training course curricula pertinent to Officer Cadets and Recruit Trainings consist of HR & HL as an inherent part;
- All the important career courses refresh HR & HL knowledge throughout the career of all Officers and Other Ranks;
- The Sri Lanka Army Year Calendar covers a number of Seminars/Lectures/Awareness programmes on HR & HL in every station with liaison of external agencies such as ICRC, HRCSL, Faculty of Law, University of Colombo, etc;
- All efforts of the GoSL and international bodies to serve and educate on transitional justice have received unreserved support of the Sri Lanka Army in terms of information provision and releasing of personnel for local and foreign training sessions;
- The SLAF ensures that adequate training is given to all personnel on human rights law and international humanitarian law. These lessons are regularly conducted in the General Service Training Sessions carried out at Station level;
- International Humanitarian Law and a Human Rights Module has been added to the Officer Cadets BSc (Aviation Studies) Programme. These modules are covered in refresher training courses as well;
- Respect for human rights is an integral component in maintaining discipline and dignity. SLAF has a robust military justice system where personnel could be charged for behaviour that challenges Air Force discipline and could also be discharged from the service if circumstances warrant so.

146. Direction No. 5.54 of the Sri Lanka Army Way Forward Strategy 2020–2025 published in December 2020 states “Sri Lanka Army shall continue to respect International Humanitarian Law and Human Rights whilst adopting resilient and farsighted Rules of Engagements to minimise collateral damage”. This guidance provides policy direction for the Sri Lanka Army to be committed towards UN treaties on Human Rights.

147. Sri Lanka Navy possesses qualified instructors for IHL & HR in all naval commands and they conduct lectures, regular awareness programmes for naval personnel in respective commands. Further, IHL & HR has been introduced as a subject for training syllabuses and all naval personnel have been educated on IHL & HR from basic training in order to make them competent to perform naval duties adhering to the ‘rules of law’.

148. The Police Headquarters conducts a Public Day every Friday where the public is encouraged to complain against the acts and omissions of the Police. A Special Investigation Unit (SIU) of the Police is mandated to launch prompt investigations into complaints and are taken up seriously by the GoSL. These investigations are monitored by the Prosecution of

Torture Perpetrators (PTP) Unit of the Attorney General's Department. The progress of investigations is then reported by the SIU to the PTP Unit. The PTP Unit also advises the SIU on the conduct of investigations. Upon completion of criminal investigations, the corresponding notes of investigations are submitted by the SIU to the PTP Unit to consider the institution of criminal proceedings.

149. The GoSL takes very seriously all cases involving the death of inmates and detainees held in official custody. The importance of a transparent and independent mechanism for criminal and forensic investigation into such incidents is recognised.

Article 24

150. Section 25 of the Enforced Disappearance Act defines 'victim' to mean:

“the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.”

151. The right of victims to know the truth about the circumstances of an enforced disappearance, and the fate of the disappeared person, is guaranteed under section 14(1) of the Enforced Disappearances Act, which states that “every victim and relative of a victim shall have the right to know the truth” on circumstance of disappearance, progress and results of the investigation, as well as the fate of the person.

152. With the establishing the OMP as independent statutory body, a mechanism has been laid out to support the right to know of relatives of victims, receiving complaints on this subject via several sources:

- Families and relatives of missing and disappeared;
- Witnesses;
- Non-governmental organizations;
- Referrals from complaints received by Sri Lanka Police and the Human Rights Commission of Sri Lanka;
- Referrals from the WGEID via the Ministry of Foreign Affairs.

153. The OMP Act codifies the action of engaging relatives of missing persons with a view to advancing their right to know the truth, under section 13(1) of the OMP Act to *inter alia*:

(a) Issue an interim report to the relative of [a] missing person, to such effect, in order to enable the Registrar General to issue a Certificate of Absence;

(b) Provide to any relative of a missing person or any other complainant, wherever the OMP is able to do so, information relating to the whereabouts of a missing person, if found to be alive, subject to the consent of the person found alive;

(c) Provide relatives of a missing person, information relating to the status of an ongoing investigation, pertaining to such missing person, unless the OMP is of the view that such would hinder the ongoing investigation or that it is not in the best interests of the missing person;

(d) Provide, or facilitate the provision of, administrative assistance, and welfare services including where required, psycho-social support, to the relatives of the missing person.

154. In 2016, the government enacted the Registration of Deaths (Temporary Provisions) Act, No. 16 of 2016 in order to issue Certificates of Absence (CoAs) in lieu of death certificates. CoAs would enable the families of the disappeared to apply for benefits under any social welfare scheme, under the supervision of the District Court to temporarily manage property and assets of the missing person and to act provisional guardian for dependent children of the missing, and to make representations before executive administrative and judicial authorities on behalf of the estate of the missing person. Further, as per the section 8J(2) of the above Act all institutions are required to recognize and accept CoA as proof of the status of the person missing.

155. On the use of CoAs, the OMP has made interventions to the Foreign Ministry and all foreign missions based in Sri Lanka and to the Governor of the Central Bank to address concerns raised by the families who have been issued CoAs concerning challenges they experience when dealing with government institutions, financial institutions and foreign missions due to lack of awareness of such institutions on the CoAs.

156. The issuance of CoAs to applicants has commenced. Of the 6,025 cases categorized as Phase I, 3,170 cases have been cleared, 558 Certificates of Death and 370 CoA have been issued.

157. Additionally, Office for Reparations Act, No. 34 of 2018 replaced the Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987 which had the mandate of assisting in the rehabilitation of affected persons by way of an outright grant. The Act makes provisions for individual and collective reparations to victims of serious violations of human rights or humanitarian law and to their relatives. Reparations could be material or symbolic, individual or collective and include financial compensation as well as restoring political and civil rights, physical rehabilitation, granting access to land, healthcare or education, irrespective of ethnic and religious identity, community or background.

158. Governments of Sri Lanka have continued to support the mechanism introduced by the Office of Reparations in addressing the hardships faced by families of those who have gone missing.

159. The OR has paid compensation to dependents of ‘missing persons’:

- 254 claims received through the OMP;
- 117 claims were already settled and the balance 137 are awaiting payments.

160. There are currently multiple means through which a victim, including a relative of a person subjected to enforced disappearance may obtain reparations for an enforced disappearance.

161. First, section 3(1) of the Enforced Disappearance Act requires the payment of compensation not less than five hundred thousand rupees to a victim of enforced disappearance.

162. Second, the OMP may under section 13(1)(f) of the OMP Act recommend the granting of reparations to ‘missing persons and / or relatives of missing persons, including but not limited to compensation and / or recommend the provision of other administrative and welfare services including psycho-social services.

163. The OMP has been developing a psychosocial responsiveness strategy, which is framed by the following principles:

- Non pathologizing of the grief and suffering of families;
- Extending non-discriminatory positive regard to families;
- Not forcing closure on the grief of not knowing the fate of a disappeared loved one;
- Strengthening resilience of families; strengthening community support circles;
- Embedding respect and psychosocial sensitivities into all systems, functions and interactions with families.

164. Further, the OMP is seeking to operationalise its strategy by:

- Strengthening the internal capacity of the OMP to effectively recognise and respond to psychosocial concerns of families and safeguard staff well-being;
- Through direct responses and referrals, facilitating focused therapeutic and other psychosocial care to members of families of the missing and disappeared persons whose wellbeing is critically affected;
- Enabling wider policy and social environment to recognise the challenges of living with uncertainties around missing and disappeared loved ones.

165. The OMP's psychosocial strategy aims to provide support to families at all stages of an investigation, including when sensitive information uncovered during the process is shared with a family member. In particular, the OMP anticipates that trained Family Support Officers will accompany family members and will ensure necessary follow up to provide support to family members. Further, investigators and all other officers charged with liaising with families will be trained on psychosocial responsiveness, as the OMP's strategy aims to integrate psychosocial responsiveness into all aspects of its work.

166. The Office for Reparations has been continuously providing support for the families of aggrieved persons who were affected by various conflicts in the past. Accordingly, a budget of LKR 459 million and LKR 815 million was allocated in 2021 and 2022 respectively, and 87% of the total recurrent expenditure of 2022 was to pay monetary compensation. In the year 2022, LKR 405.3 million was disbursed covering 2402 cases related to death and injuries, missing persons and damaged properties due to conflict in the Northern and Eastern provinces and in a few other areas.

167. Psychosocial support program implemented by the OR:

(a) The Office for Reparations has formed a Psychosocial Support (PSS) programme as one of its flagship interventions to respond to the needs of aggrieved persons (i.e., persons who have suffered due to manmade conflicts occurred in Sri Lanka). This programme is conducted with the technical assistance of the International Organization for Migration (IOM);

(b) The PSS unit has two projects that are currently underway, with one project focused on providing individually catered victim-centric support to aggrieved persons, and their families, and the other aimed at working with larger community groups. Both interventions are developed with the intention of improving the lives of aggrieved persons and affected communities;

(c) The first program conducted by the Unit is the Case Manager Initiative. Within this program, the OR identified and capacitated approximately fifty officials based in 23 districts in Sri Lanka to conduct individualized needs assessments with aggrieved persons and their families and provide effective services through a series of necessary referrals. Moreover, this approach provides individual support to the beneficiary by providing emotional support through effective communication, active listening and empathy. This enables the beneficiary to express their emotions and discuss their evolving needs, whilst identifying the resources available within them, in their family and the community. This approach aims at promoting quality, cost-effective outcomes and empowerment of beneficiaries and their families;

(d) Within this initiative, the Case Managers selected from the OR and the Divisional Secretariats were trained in delivering psychosocial support to aggrieved persons using the Manual for Training of Case Managers Delivering Psychosocial Support which was designed for the local context by mental health and psychosocial support experts attached to the OR and the IOM;

(e) The second initiative is currently being piloted in five districts in Sri Lanka, and is aimed at increasing social integration and empowerment amongst community members. The program will be conducted with the support of the National Integration Coordinators who will form small groups within the communities. These groups will comprise of 15–20 individuals who are affected by conflict/violence related trauma. The officials will empower and build capacities of the small-groups and guide them to conduct a project that benefits themselves and their communities;

(f) The OR continues to recognize the deep-rooted relationship between conflict/trauma and how it impacts psychosocial wellbeing in individuals, families and communities. These initiatives are conceptualized and implemented with recognition of this relationship, and with the intention of reducing/overcoming its vast negative impact.

Associations related to those disappeared

168. Sri Lanka guarantees freedom of assembly and association in terms of Article 14(1) (b) and (c) of the Constitution. Freedom of association protects the right of individuals to establish and participate in private associations. As such victims of enforced disappearance have the right to associate and to assemble. The freedom of peaceful assembly was guaranteed to protests held by concerned citizens with respect to a number of public issues including discovery of the truth regarding missing relatives. These protestors were permitted to express their concerns in public. There are several Non-governmental organizations in Sri Lanka concerned with attempting to establish the circumstances of enforced disappearances, and they enjoy complete freedom of association and non-interference by the State.

169. Moreover, section 14(2) of the Enforced Disappearances Act provides that every victim and relative of a victim shall, subject to restrictions placed by law, have ‘the right to form and freely participate in organisations and associations concerned with attempting to establish the circumstances of [enforced disappearances], and the fate of disappeared persons, and to assist victims of [enforced disappearances].’ Examples of such organizations are, ‘Association of Families Searching for their Disappeared Relatives’; ‘Mothers Front’; ‘Mothers of the Disappeared’.

170. In March 2020, in a case before the Vavuniya High Court,¹⁸ the OMP supported, in principle, the rights of the families of the missing and disappeared to participate and be represented by Attorneys-at-Law in magisterial inquiries into human remains. Further, the OMP is referred as one of the defendant along with the Attorney General’s Department, the OMP has emphasized on the importance of the participation of families in inquiries into human remains which are essential for the effective administration of justice, as families can provide crucial information necessary for the conducting of investigations; and; by referring the above, and the Global standards on the subject matter concerned, and for all the reasons mentioned above, the OMP’s request considered wisely by the Provincial High Court of Vavuniya in Feb 2022.

Article 25

171. Abduction of children has been criminalised in the Penal Code of Sri Lanka, wherein section 352 stipulates that:

“whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor”.

172. Constitutional and other legal safeguards of children are found in:

- Article 12(4) of the Constitution provides that special provision may be made by law for the advancement of women, children or disabled persons;
- In terms of Article 27(13) which provides for Directive Principles of State Policy and Fundamental Duties, State shall promote with special care the interests of children and youth;
- The Children’s Charter in Articles 2, 3 and 6 also enshrines the concept of best interests of the child;

¹⁸ In case No. B232/18, concerning investigation into the suspected gravesites at the Sathosa building in Mannar town, Mannar, on 10 March 2020 – on the question of the rights of families who are family members of the missing and disappeared having standing to participate in the said case.

- The concept is found in legally enforceable form in several laws namely: Section 5(2) of the International Covenant for Civil and Political Rights Act, No. 56 of 2007,¹⁹ the Prevention of Domestic Violence Act, Tsunami (Special Provisions) Act;
- Additionally, Section 3(b), 25(3) (a) of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015 specifically refers to the best interest of the child.

173. The Ministry of Women and Child Affairs at the national level being in charge of formulation of policies and projects, monitoring and evaluation with regard to the protection of children together with the Departments and Statutory Institutions assigned to the said Ministry, i.e. the Department of Probation and Child Care Services (DPCCS), the Children's Secretariat and the National Child Protection Authority (NCPA) are mandated to ensure a protective environment for children and to ensure children are free from all forms of abuse. Furthermore, Child Welfare and Child Protection mandates are also held at the Ministry of Justice and cross-cutting responsibilities for child welfare and protection are also held by several ministries including the Ministry of Education, Ministry of Health and the Ministry of Public Security and Ministry of Disaster Management.

174. Women and Child Development Units have been established in all 25 Districts of Sri Lanka. These Units consist of a Child Rights Promotion Officer, Women's Development Officer, Early Childhood Development Officer, Relief Sister, Counselling Assistant and a Psychosocial Assistant to address issues related to children. Two help lines are maintained at the NCPA and the Women and Children's Bureau of the Police Department to entertain complaints against the abuse of children from the general public. These help lines are in operation 24 hours daily. In addition, DPCCS too receives complaints on the same and are referred to the NCPA and Police for investigation and appropriate legal action. The helpline has established a referral system with different departments of the government as well as the civil society organizations.

175. Sri Lanka has given due recognition to children affected by the armed conflict, children without parents and children with single parents. Children who had been reported to the previous commissions and to the Working Group as missing persons, but were later found as forcibly recruited child soldiers were rehabilitated and released back to their families. At the end of the conflict in May 2009, the State recognized the importance of rehabilitating youth, and it was accorded the highest priority through a national action plan. All rehabilitation centres were gazetted. Of those 10,790 rehabilitated cadres of the Liberation Tigers of Tamil Eelam, 594 were between the ages of 12 and 18.

176. The National Centre for Training and Counselling of Children, affiliated to the DPCCS has been established to cater the needs of abused and vulnerable children. The inmates are admitted for six months to the centre after careful examination of their needs for psychological counselling for recovery. An individual treatment plan is prepared for each child so admitted and progress of the child is monitored by a multidisciplinary expert group.

¹⁹ Section 5(2) provides that in all matters, whether by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interests of the child shall be of paramount importance.