

Women’s Action Network – Sri Lanka, Contact: Shreen Saroor, qadrishreen@gmail.com and **Human Rights Litigation and Advocacy Clinic at the University of Minnesota Law School**, 229 19th Avenue South, Minneapolis, MN 55455, Contact: Jennifer Green, jmgreen@umn.edu

Responses to Questionnaire on Short-Term Enforced Disappearances

July 31, 2023

1. How is the notion of ‘short-term enforced disappearances’ understood and in which contexts do they occur?

Today, Sri Lanka ranks second in the world for the highest number of enforced disappearances.¹ Disappearance is a tactic that was used against mostly Tamils during Sri Lanka’s civil war. The background of the high numbers of years-long disappearances has intensified the threat and trauma of short-term disappearances.

Disappearance was used against Muslims and Tamils in the north and east by paramilitary groups during the war and now (mostly short-term) disappearance is used against protestors in the South including student leaders, trade unionists, journalists, social media activists and front-line organizers of people’s protests by the Government. The Government often labels individuals (dissenters and protesters) as terrorists without evidence to support these claims and abuses the Prevention of Terrorism Act (PTA) and the ICCPR Act of 2007 (Sri Lanka’s localised act) to arrest individuals arbitrarily.

Many of the large number of disappearances caused by the civil war² remain unresolved due to the Government’s failure to keep its promises to release information and identities of individuals detained by armed forces during and after the war.³ The Sri Lankan Government still fails to

¹ *Families of forcibly disappeared persons mark six years of struggle in Sri Lanka*, Peoples Dispatch, (Feb. 22, 2023), <https://peoplesdispatch.org/2023/02/22/families-of-forcibly-disappeared-persons-mark-six-years-of-struggle-in-sri-lanka/>.

² Global Human Rights Defence, *Enforced Disappearances in Sri Lanka* (Feb. 2022), <https://ghrd.org/wp-content/uploads/2022/02/Enforced-Disappearances-in-Sri-Lanka.pdf>.

³ *Id.*

provide families searching for their loved ones with answers.⁴ Family members of enforceably disappeared individuals continue to search for their relatives, believing that they are “detained in secret detention centres deep in the heart of the Sri Lankan State.”⁵

Both long-term and short-term secret detentions leading to permanent disappearances are common because Sri Lanka’s justice system lacks structural guarantees to prevent secret detentions, including lack of access to legal representation, few limits on pretrial detention, little effective access to bail, and no accessible options to challenge the legality of detention.⁶ In Sri Lanka, short-term disappearances are continuously used to silence dissenters. The Government uses short-term disappearances to round up activists and does not disclose their location for short spans of time ranging from hours to days. For example, last year and early this year, a large number of student protestors were rounded up. In August 2022, student leader Wasantha Mudalige was arrested under the PTA.¹¹⁰ Mudalige was continuously incarcerated (in isolated locations), tortured and abused for his political views and protests. For the first three months of his detention, he was shuffled between detention centres operated by the Terrorism Investigation Department (TID) and military camps. He and other detained individuals were held in solitary confinement, in cramped conditions, without access to sanitation facilities and sunlight. Mudalige was not taken before a magistrate until 14 December 2022, nearly three months after his arrest.⁷

Activists and family members of the disappeared working for memorialization of the past, including Tamil mothers in the North and East, are arrested under the PTA or Sri Lanka’s ICCPR Act and sometimes made to disappear until they are produced in court. Families often do not know where they are detained. This brings back the memory of the bitter past of many who were forcibly disappeared forever.

Furthermore, when people are taken, there is no clear chain of custody and family members and civil society often do not know who is taking them and under whose authority the investigation takes place. The Criminal Investigation Department (CID), TID, Financial Crimes Investigation Division (FCID), National Intelligence Bureau (NIB), Police Narcotic control unit, and military intelligence officers from the Navy, Air Force and Army often take individuals into custody. This

⁴ COLOMBO TELEGRAPH, *Investigating The Truth of What Happened to Enforced Disappeared Tamils in Sri Lanka* (Aug. 30, 2019) <https://www.colombotelegraph.com/index.php/investigating-the-truth-of-what-happened-to-enforced-disappeared-tamils-in-sri-lanka/>.

⁵ Chulani Kodikara, “Where are they?” : *The Matter of Surrendeers and Gotabaya Rajapaksa’s Response*, SUNDAY OBSERVER (Oct. 20, 2019) <http://www.sundayobserver.lk/2019/10/20/opinion/%E2%80%9Cwhere-are-they%E2%80%9D-matter-surrendeers-and-Gotabaya-rajapaksa%E2%80%99s-response>.

⁶ Office of the High Commissioner for Human Rights, *Rep. of the Working Group on Arbitrary Detention on Its Visit to Sri Lanka*, U.N. Doc. A/HRC/39/45/Add.2, at 6 (2018).

⁷ *Authorities Continue to Crack Down on Protests and Detain Online Critics in Sri Lanka, Despite UN Human Rights Review*, CIVICUS, <https://monitor.civicus.org/explore/authorities-continue-crack-down-protests-and-detain-online-critics-sri-lanka-despite-un-human-rights-review/>.

leaves victims vulnerable for at least a few hours,⁸ because they cannot report torture or mistreatment since they are unaware of which authorities are abusing them and/or are in control of their custody. Men come in civilian clothes and unmarked vehicles and often take people without arrest warrants or detention orders, making it difficult to pinpoint where they are or who is in charge.

The culture of impunity around long-term disappearance induces short-term disappearance. To date, the lack of accountability and illegal practices established by officers who have abducted, detained, tortured, and killed many Tamils in the post-civil war period allows these same officers, now promoted to high ranks, to perpetrate short-term disappearances as part of their official duties.

Women are disproportionately impacted by short-term enforced disappearances because they often suffer physical, economic, social, and psychological harm when the family breadwinners are detained by the State, and due to frequent delays in arrest notices, spouses are sometimes unaware for days about what happened to their loved ones. Many are too poor to travel to visit detention centres. In some cases, family members have been detained and then transferred to different prisons without notifying the families. This further adds to women's burdens of traveling constantly and depleting meager earnings. Officials abuse their power through demanding sexual favors in exchange for information about or services for detained loved ones.

During COVID there were many individuals rounded up and detained and families did not know where they were taken. Some individuals who violated COVID curfews were detained and tortured and a couple of them were allegedly murdered in custody. For example, a man who went to find milk powder for his baby was taken in by the police for a violation of a COVID curfew, and later his body was found in the river. The authorities reported that he jumped into the river and committed suicide. Authorities were also known to take people who violated COVID restrictions to undisclosed locations manned by the military. This brought back the painful memory of long-term disappearances and caused many families to fear whether their family members would return from COVID quarantine.

Short-term disappearances also have a chilling effect on civil society activists who have been working for years to bring justice to the long-term disappeared. One case which aptly demonstrates the fear caused by short-term disappearance concerns civil society activist Chinthaka Rajapakse, who has been part of CSOs lobbying for economic, social, and cultural rights in Geneva. He was participating in a peaceful protest on August 18, 2022, when he was arrested alongside other activists.⁹ A few CSO members searched for him in every police station in Colombo for over 6 hours and could not find him. He was later presented before the Colombo Magistrate Court on

⁸ The Penal Code states that detained individuals must be produced before a magistrate within 24 hours, while the PTA requires individuals to be produced within 48 hours, which means that there is still ample time for individuals to be abused in detention.

⁹ *PARL member Chinthaka Rajapakse*, Sri Lanka Brief (Aug. 23, 2022), <https://srilankabrief.org/parl-member-chinthaka-rajapakses-arrest-is-illegal-and-wrong/>.

August 19, 2022, and the police requested that Chinthaka continue to be detained until August 26. Reports suggest that police may have been motivated to detain Chinthaka further due to his long-standing activism.¹⁰

Fellow activist Shreen Saroor details Chinthaka's brief disappearance and civil society's response to his detention:

Chinthaka is a civil society activist who was taken in by an unknown section of the police for participating in the protest last year. We (a group of CSO members) searched for him across police stations in Colombo, but we could not find him. In some police stations, the authorities refused to answer our questions about him. After about 6 hours of searching for him, we then complained to the OHCHR office desk in Sri Lanka. After a few calls from the UN, we were told that Chinthaka was taken to the Cinnamon Garden Police Station. When we arrived there, the authorities said he was taken to Colombo Fort Police Station. We were concerned that he might have been tortured and permanently disappeared, as this has previously been a common practice. But later that day he was produced before the Fort magistrate and further remanded.

Another example of the use of short-term disappearances is the Government's targeting of *Aragalaya* ("people's struggle") activists. In September 2022, many of these activists were arrested on the spot and held for periods ranging from a few hours to a few days without their families and friends being told where they were being held.¹¹ The activists also had no way of informing their families because their phones were often taken away. Some had many arrest warrants issued against them, but they were unaware of these warrants and thus did not go to court. Later, police accused the protestors of failing to surrender and arrested these individuals, using court orders which the police had not previously reported to those arrested.¹²

In the context of the Government's targeting of *Aragalaya* activists, on August 5, 2022, Ambika Satkunanathan, former member of the Human Rights Commission of Sri Lanka, and Mirak Raheem, ex-Commissioner of Sri Lanka's Office on Missing Persons (OMP) filed a fundamental rights petition against several Government entities, including the Inspector General of Police, the Minister of Justice, the OMP, the Attorney General, and multiple military commanders. The petition related to "a wave of enforced disappearances,"¹³ facilitated by Government practices of

¹⁰ *Id.*

¹¹ Kamanthi Wickramasinghe, *Where will Govt.'s crackdown on 'aragalaya' activists end?*, Daily Mirror (Sept. 12, 2022), <https://www.dailymirror.lk/news-features/Where-will-Govt-s-crackdown-on-aragalaya-activists-end/131-244674>.

¹² Iqbal Athas & Rhea Mogul, *Sri Lanka protestors burn politicians' homes as country plunges further into chaos*, CNN (May 11, 2022), <https://edition.cnn.com/2022/05/10/asia/sri-lanka-protests-police-shoot-intl-hnk/index.html>.

¹³ *Persons taken into custody held in 'undisclosed locations'*, The Island (Aug. 11, 2022), <https://island.lk/persons-taken-into-custody-held-in-undisclosed-locations/>.

arresting individuals and subsequently temporarily detaining them in secret locations in contravention of Sri Lankan law, the Constitution, and international human rights law.¹⁴

Civil society and media have reported that Ceylon Teachers Union Secretary Joseph Stalin was arrested in Colombo alongside 15 other activists while protesting against the Kotelawala National Defence University (KNDU) Bill.¹⁵ The activists were then taken from the South to the North of the country where they were forcibly detained at the Keppapulavu Air Force camp quarantine centre for 14 days.¹⁶ Civil society was unaware of what had happened to Mr. Stalin during the period of his detention and were worried that he would disappear. Civil society reported that the military and police used COVID as an excuse to arbitrarily detain Mr. Stalin; this was corroborated by media reports indicating that Mr. Stalin and the other activists were forcibly detained in the quarantine centre despite receiving bail from the court.¹⁷ This case represents the first instance that the Quarantine and Prevention of Diseases Ordinance was openly used to stifle dissent. During COVID, this law was frequently used by the military to detain average citizens who violated COVID curfews.

2. Which are the legal frameworks and practices that may lead to ‘short-term enforced disappearances’, and which are the legal frameworks and practices that might prevent them?

The **Prevention of Terrorism Act (PTA)**, Sri Lanka’s most prominent anti-terrorism law, was enacted in 1979 as a “temporary” measure to curb a Sinhala youth uprising in the South. Soon it became permanent and was used to target ethnic minorities, particularly young Tamil men, in the North and East. It has long been criticized for its lack of compliance with international law and standards. Despite recent amendments, the PTA contains overly broad and loose definitions of terrorism, national security, and the nation’s sovereignty. Currently Sri Lanka has a vibrant civil society and a low threat of terrorism, but a dangerously authoritarian and corrupt Government is using the threat of terrorism to concentrate Executive power and attack critics and human rights defenders. This has facilitated the Government’s use of torture to secure confessions from detainees, arbitrary arrests, long detentions with limited access to family and counsel, and the targeting of minorities.

In particular, section 9 of the PTA, which grants extraordinary power to the Minister of Defence to order the detention of individuals for investigation or as a preventative measure without requiring the ministry to make the information publicly available, can facilitate short-term

¹⁴ *Id.*

¹⁵ *Ceylon Teachers Union secretary and union members released following growing protests against their detention*, Tamil Guardian (July 18, 2021), <https://www.tamilguardian.com/content/ceylon-teachers-union-secretary-and-union-members-released-following-growing-protests>.

¹⁶ *Id.*

¹⁷ *Id.*

enforced disappearances.¹⁸ Section 7(3)(a) of the PTA has also been criticised, as it allows police officers to take arrested individuals “during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation.”¹⁹ Amnesty International has decried this provision as coming close to constituting official approval of enforced disappearance.²⁰

The Government has previously claimed to be reforming the PTA and has most recently proposed a new draft Anti-Terrorism Act (ATA), which it officially published on March 22, 2023. This comes after the Government announced in November 2022 that it would be replacing the PTA with a new National Security Act and would be consulting a panel of “experts.”²³ This was highly confusing to civil society and suggests that the Government will not just repeal the PTA but bring in another repressive law. The “experts” are those that are expected to be supportive of Government proposals such as retired judges, members of the different intelligence units and other former Government and military officers rather than community-based human rights advocates, victims and affected families. As advocates and CSOs feared, the new ATA contains vague provisions, does not clearly define terrorism, fails to protect journalists, and allows detention orders used to arrest suspects to be extended to a period of one year.²¹ This provision “has a drastic effect of restricting the freedoms of those arrested” since it allows authorities to detain individuals without having to produce them in court.²² Arrested individuals could therefore be detained for prolonged periods, under the pretext of rehabilitation, which may increase the likelihood of enforced disappearance.

The ICCPR Act of 2007 should guarantee the right to peaceful protest. Instead, protesters, activists, and journalists face charges under the Act’s provisions that say “[n]o person shall propagate war or advocate national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.”³⁰ The ICCPR Act also entitles alleged offenders to a right to a fair trial, but individuals are arrested with no credible evidence to substantiate charges. Just this October 2022, a peaceful protest against the Government and increasing cost of living resulted in multiple arrests and a tense standoff with the police.³¹ Recommendations by the Special Rapporteur on freedom of association and assembly urged authorities to “create a safe and enabling environment for all to express their views.”³² Often the ICCPR Act and PTA are used together to penalise dissent and minorities. Most recently these laws have targeted activists leading people’s protests against Government repression of dissent, corruption and the escalating cost of living.

¹⁸ Amnesty International, *Locked Away: Sri Lanka’s Security Detainees* (Amnesty International, London: 2012), 32.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Naveera Perera, *Understanding Sri Lanka’s Controversial Anti-Terrorism Bill 2023: Why Calls to Repeal the 1979 PTA Persist*, JURIST (May 16, 2023), <https://www.jurist.org/features/2023/05/16/understanding-sri-lankas-controversial-anti-terrorism-bill-2023-why-calls-to-repeal-the-pta-persist/>.

²² *Id.*

The ICCPR Act is prone to abuse and arbitrariness which may cause enforced disappearance because Section 3(4) of the Act “allows for a person to be arrested for an alleged offence without a warrant.”²³ This provision also does not allow bail, meaning that only High Courts can grant arrested individuals bail.²⁴ This in turn allows the state to arbitrarily arrest and detain individuals without concrete evidence, and it facilitates prolonged detentions of individuals before they are produced before a High Court Judge, meaning that authorities may have more leeway to detain individuals in unknown or changing locations.²⁵

The Sri Lankan judiciary has also failed to provide safeguards against enforced disappearance. Detained individuals are often not provided with arrest warrants immediately or justifications for their arrest. There is a significant failure by the Sri Lankan state to record and disclose information of detained individuals—especially who arrested them where, and their places of detention. The Government often abuses national security arguments against anyone who tries to obtain these details.

3. Which are the main procedural questions that may arise for domestic authorities, the Committee and the Working Group when dealing with ‘short-term enforced disappearances’?

In addition to the lack of procedural safeguards present in the PTA, ATA, and ICCPR Act and the provisions in these acts allowing authorities to arbitrarily detain people, the Government has not been transparent in providing details of how many people are arrested or issued detention orders. Instead, an ongoing practice is to round up protestors and detain them without explanation or valid charges. Tharinthu Uduwaragedara, a well-known social media activist and journalist, was arrested on 28 July 2023 while he was covering a protest.²⁶ He was beaten up severely by the police, then he was forcefully pushed into a police jeep and officers hit him while many witnessed it and the media caught it live.²⁷ He ended up in the Borrella Police Station and on the evening of 29 July, he was admitted to the national hospital in Colombo. After the Magistrate visited the hospital to observe him, he was released from the hospital on bail.²⁸ The police could not prove a single charge that they framed against him when they took him into custody, kept him in the police station and tortured him.

²³ Gehan Gunatilleke, *How a human rights law became a tool of repression in Sri Lanka*, HIMAL Southasian (Feb. 7, 2023), <https://www.himalmag.com/iccpr-human-rights-law-repression-blasphemy-sri-anka/>.

²⁴ *Id.*; *Civil society activists condemn abuse of ICCPR Act*, Daily Mirror (June 26, 2023), <https://www.dailymirror.lk/news-features/Civil-society-activists-condemn-abuse-of-ICCPR-Act/131-261772>.

²⁵ *Id.*

²⁶ *Journalist Tharindu Uduwaragedara beaten, arrested by police*, Daily Mirror (Jul. 29, 2023), https://www.dailymirror.lk/breaking_news/Journalist-Tharindu-Uduwaragedara-beaten-arrested-by-police/108-264158.

²⁷ *Id.*

²⁸ *Tharindu Uduwaragedara released on bail*, News First (9:24 PM 29 July, 2023), <https://www.newsfirst.lk/2023/07/29/tharindu-uduwaragedara-released-on-bail/>.

The PTA does not give much power to the magistrates, and they function like a rubber stamp, thus oftentimes the authorities do not report to court when they transfer detainees. Even though magistrates have the authority to visit the prisoners and detainees, these visits never take place. This creates fertile ground for mistreatment and torture of those in custody, which in turn is met with impunity.

The use of the above-mentioned laws (and potential use of the ATA if it gets enacted) to arbitrarily detain protestors and minorities demonstrates the connection between arbitrary arrest and detention and short-term disappearance, stressing the need for all stakeholders (including the domestic authorities, the Committee, and the Working Group) to expand their scope to prioritize violations in the context of arrest and detention, which often facilitate disappearance, especially in the context of Sri Lanka, where lack of information about the disappeared and impunity for enforced disappearance has been a reality for decades. The Committee and Working Group also should focus on the ongoing enactment of more draconian laws like the proposed ATA, as well as the abuse of the ICCPR Act in Sri Lanka, where the Government is using national security arguments to violate fundamental rights enshrined in the constitution.