



MEMORANDUM

July 17, 2018

To: Hon. Brad Sherman
Attention: John Brodtke

From: K. Alan Kronstadt, Coordinator, Specialist in South Asian Affairs, akronstadt@crs.loc.gov, 7-5415
Bruce Vaughn, Specialist in Asian Affairs, bvaughn@crs.loc.gov, 7-3144
Shribhavani Venkataramanan, Research Associate, svenkataramanan@crs.loc.gov, 7-5050

Subject: **Enforced Disappearances in Sri Lanka**

This memorandum responds to your request for background information on the incidence of so-called enforced disappearances in Sri Lanka. Portions of the following content may appear in other CRS products. Please contact us if you need further assistance.

Enforced Disappearances in Sri Lanka

Enforced or involuntary disappearances have been and continue to be a significant issue in Bangladesh, India, Pakistan, and Sri Lanka. Disappearances have also taken place in Nepal, in particular during the country's 1996-2006 civil war. However, the number of such incidents has been negligible in recent years; the country is thus omitted from the present review.¹

The United Nations Office of the High Commissioner for Human Rights' (OHCHR's) International Convention for the Protection of All Persons from Enforced Disappearance (or Convention on Enforced Disappearance, CED) is a treaty-based instrument adopted by the United Nations in 2006. According to Article 2 of the Convention,

“enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 1 states that, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced

¹ The Geneva-based International Commission of Jurists (ICJ) estimates that 1,300 Nepalis were “disappeared” from 1996 to 2006 (see a brief review of the Nepali setting in the August 2017 report “No More ‘Missing Persons’: The Criminalization of Enforced Disappearance in South Asia” at <https://www.icj.org/wp-content/uploads/2017/08/South-Asia-Enforced-Disappearance-Publications-Reports-Thematic-Reports-2017-ENG.pdf>).

disappearance.”² As of June 2018, the CED had 58 state parties among 96 signatory states. Of South Asia’s five largest states, only Sri Lanka is party to the Convention; India is a signatory, while Bangladesh, Nepal, and Pakistan have taken no action. The United States is not signatory to the CED.³

The State Department’s annual *Country Reports on Human Rights* no longer lists enforced disappearances among the serious problems faced by Sri Lanka. It does, however, note ongoing related problems and substantive government efforts to address past abuses: “The military and police harassed civilians with impunity, and impunity for crimes committed during and since the armed conflict continued. The government, however, took steps to investigate, prosecute, and punish some officials who committed human rights abuses.”⁴

A 2014 UN investigation on Sri Lanka concluded that the country’s security forces “committed widespread or systematic torture, enforced disappearances and other serious human rights violations during and in the aftermath” of the country’s 1989-2003 civil war.⁵ While democratic reforms and an overall improvement in human rights have made Sri Lanka safer and freer than it was in 2015, there is, within the international community, disappointment with the slow pace of progress, including addressing missing persons and the Prevention of Terrorism Act (PTA).⁶

The PTA was enacted in 1979. According to HRW, the Act “has been used to hold people without charge for months, even years,” and the group joins other human rights advocates in calling for the law’s repeal or revision.⁷ Following an official May 2016 visit to Sri Lanka, a UN Special Rapporteur stated:

I have received allegations of recent so-called “white van abductions” – a reference to practices that in the past led to enforced disappearance of persons. The situation today cannot be compared to the past, but the persistent allegations of white van abductions are a reminder that arrests should be conducted transparently and that senior officers must be accountable for them.⁸

At the end of his July 2017 visit at the behest of the UNCHR, another UN Special Rapporteur said, “Torture in Sri Lanka is one of the worst in the world that I have witnessed.”⁹

The lowest credible estimates of the number of outstanding cases of disappearances is in the tens of thousands. Victims are mainly ethnic Tamils suspected of links to the separatist groups, human rights

² See <https://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

³ In 2005, the State Department expressed “serious concerns” about “a document that includes provisions the United States does not support, and to which we have registered key reservations,” especially “insufficient” definitions and an absence of superior orders that could leave “unwitting” security personnel subject to unjust prosecution (see the statement at <https://go.usa.gov/xUk5E>).

⁴ See the Sri Lanka narrative at <https://go.usa.gov/xUkRp>.

⁵ See <https://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>.

⁶ United Kingdom Mission to the United Nations, Geneva, “Human Rights Council 37: Joint Statement on Sri Lanka,” March 21, 2018 <https://www.gov.uk/government/news/human-rights-council-37-joint-statement-on-sri-lanka>. See also “Human Rights Council Concludes General Debate on the Report of the High Commissioner for Human Rights,” United Nations Human Rights Council, March 22, 2018.

⁷ Human Rights Watch, “Locked Up without Evidence: Abuses Under Sri Lanka’s Prevention of Terrorism Act,” January 29, 2018, at <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>. Amnesty International also views the PTA as a driver of enforced disappearances: “Enabling incommunicado and secret detention, the PTA places people outside the law and leaves them vulnerable to human rights violations including torture and enforced disappearances (see AI’s April 3, 2017, release “Sri Lanka – Victims of Disappearance Cannot Wait Any Longer for Justice”).

⁸ UNOHCHR, “Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the Official joint visit to Sri Lanka – 29 April to 7 May 2016.”

⁹ “Practices of Torture Very Ingrained in the Security Sector – Ben Emerson QC,” *Asian Tribune* (Bangkok), July 15, 2017.

defenders, journalists, government critics, aid workers, activists, and prominent leaders.¹⁰ In the April 2017 words of Amnesty International's Secretary-General, Salil Shetty,

There is no community in Sri Lanka that remains untouched by the trauma of enforced disappearance. Most people in the country suffer the absence of a loved one or know someone who does. They have waited years, and in some cases, decades, to learn of the fate of their relatives. Until justice is delivered to these victims, the country cannot begin to heal, let alone move towards a more promising future.¹¹

Colombo signed the CED in 2015 and ratified in 2016, but, according to Human Rights Watch, the government “made clear that the law would not be retroactive.”¹² A 2017 report by the UN Committee Against Torture determined that the government “should take all the necessary measures to combat impunity for the crime of enforced disappearance,” in particular through legislation and independent investigative mechanisms.¹³ The Human Rights Commission of Sri Lanka had been a strong proponent for passage of the International Convention for the Protection of Persons from Enforced Disappearances Bill, suggesting that it could be vital in curbing impunity for human rights violations committed by Sri Lankan state forces.¹⁴ The Sri Lankan Parliament ratified the legislation in March 2018.

Among the four pillars of a unanimously-adopted 2015 UNCHR resolution on Sri Lanka was establishment there of an Office of Missing Persons (OMP) tasked with determining the status of all missing persons in Sri Lanka. After a delay of more than two years, the OMP formally opened in March 2018, when President Maithrapala Sirisena appointed seven commissioners with a reported budget of more than \$8 million in 2018.¹⁵

In June 2018 testimony, HRW's Asia Advocacy Director told a House panel that, “despite the promises of the [Colombo] government, justice for these crimes, and answers about the fate of those forcibly disappeared, remain elusive.” He decried the “slow” work of the OMP, saying it has yet to issue any public reports, and that “many families of the disappeared remain in the dark about the fate of their family members.”¹⁶

¹⁰ See AI's April 3, 2017, release “Sri Lanka – Victims of Disappearance Cannot Wait Any Longer for Justice.”

¹¹ *Ibid.*

¹² See <https://www.hrw.org/world-report/2018/country-chapters/sri-lanka>.

¹³ See CAT/C/LKA/CO/5 at <https://www.ohchr.org/EN/countries/AsiaRegion/Pages/LKIndex.aspx>.

¹⁴ See the September 28, 2017, Human Rights Commission of Sri Lanka's observations on the convention at <http://hrcls.lk/english/wp-content/uploads/2017/10/Letter-to-President-Protection-from-Enforced-Disapp-Bill-English.pdf>;

¹⁵ “President Appoints Commissioners to Office of Missing Persons,” *Sunday Times* (Colombo), March 1, 2018.

¹⁶ See the June 20, 2018, testimony of John Sifton at <https://docs.house.gov/meetings/FA/FA16/20180620/108444/HHRG-115-FA16-Wstate-SiftonJ-20180620.pdf>.
