**Submission to the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances - Project of joint statement on the notion of short-term enforced disappearance**

**Submitted by**

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**2 August 2023**

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

Short-term enforced disappearances are understood as the temporary period when the whereabouts of a person arrested or abducted by the state are unknown by their family and legal representatives. This is the period between the arrest and until the arrested person is reported to have been brought to an authorized place of detention where the detention is formally recorded. During this period, since the abducted or arrested person cannot enjoy due process rights or accesses any protections to which they are entitled by law.

In Sri Lanka, short-term disappearances have occurred for decades mainly under the draconian Prevention of Terrorism Act (PTA). They also took place during mass protests following the economic and the resulting humanitarian crisis in 2022, when protestors demanded the removal of the president and prime minister at the time.[[1]](#footnote-1) During the arrest process, in several instances, the whereabouts of the arrested person would be unknown for a few hours after the process, during which family members and legal representatives would not be able to locate the arrested person:

1. 2 April 2022

“Anuruddha Bandara had been taken from his home in the early hours of yesterday allegedly by several people in civvies who claimed to be from the Modara Police. Thereafter, the Young Journalists’ Association wrote to the Human Rights Commission of Sri Lanka (HRCSL) pleading for assistance to trace the activist, noting that when they contacted the Modara Police Chief Inspector, he had denied that Mr. Bandara was in their custody.”

<https://www.sundaytimes.lk/220403/news/youth-activist-behind-gohomegota-facebook-campaign-arrested-and-produced-in-court-479036.html>

1. 27 July 2022

“BREAKING: Veranga Pushpika, a student of Ruhuna Uni. & @IUSFSL activist, forced out of a bus & whisked away by plain clothes men near #Colombo Fort Railway Station a short while ago, after taking part in a protest organised by Coalition of Trade Unions & Mass Organisations. #Lka”

<https://twitter.com/jdslanka/status/1552210683470774272?s=46&t=w9izpClqpAIRDmMqnd0O0w>

1. 8 August 2022

“NOW: Mangala Maddumage, a former leader of @IUSFSL & national organiser of Revolutionary Students Union was abducted near #Colombo Public Library by unidentified in a three wheeler, a short while ago. #SriLanka”

<https://twitter.com/JDSLanka/status/1556530539091337216?s=20>; <https://lankasara.com/news/activist-mangala-maddumage-in-an-abduction-type-arrest/>

1. 18 August 2022
2. “3 students from the South Eastern Uni Mohamad Kamaldeen M. Dilshan, Nuwan Dharshana & Lakshitha Sanjeewa Rathnasiri, have been traced by lawyers to Cinammon Gardens Police. Galwala Siridhamma himi, Thilina Maduranga, Tharindu Milan & atleast 4 other students still unaccounted for”

<https://twitter.com/EmDeeS11/status/1560273002876399616?s=20&t=Cv8Cbvp74NyD6eQI8-EbTA>

1. “Tharindu Milan from Japura Uni, Rifath from Open Uni, Thilina Maduranga from Eastern uni, Lahiru Nuwan from Pera uni, Pasindu Rangana & 5 other students have been traced to Slave Island police. Galwewa Siridhamma himi is at Fort Police & Pokunuvita Piyasoma himi is still missing.”

<https://twitter.com/EmDeeS11/status/1560291771283677184?s=20&t=Cv8Cbvp74NyD6eQI8-EbTA>

1. 21 August 2022

Wasantha Mudalige held at a temple in Nawagamuwa for several hours - <https://www.newsfirst.lk/2022/08/24/iusf-convener-held-in-nawagamuwa-following-arrest/>

1. 22 August 2022

Media reports state that the MoD has issued a 90-day DO under the #PTA on Wasantha Mudalige, Siridhamma himi & Hashan Jeevantha, but, lawyers & family are still unaware of their whereabouts & have not been shown the DO. <https://twitter.com/EmDeeS11/status/1561666448681906176?s=20&t=6_CzVxt4KwshEAodTILuVA>

1. 18 October 2022

“The police are not disclosing where the 7 arrested students from today's protest have been taken to. Lawyers have checked the Kadawatha, Kiribathgoda, Peliyagoda & Wattala police stations so far, but they have not been taken there.”

<https://twitter.com/EmDeeS11/status/1582364111177863170?s=20&t=oswO4WGVHzMIXUeMcq1SuQ>

1. **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?**
	1. Legal Frameworks and practices that may lead to short term enforced disappearances

*Section 7 of the PTA*

Section 7 of the PTA is an exception to Section 37 of the Code of Criminal Procedure (outlined below) and allows persons to be held in police custody for up to seventy-two hours, rather than twenty-four hours, before being produced before a magistrate.

In the first national study of prisons conducted by the Human Rights Commission of Sri Lanka (HRCSL), persons arrested under the PTA during and following the armed conflict in Sri Lanka described several patterns of arrest and detention that constituted short-term enforced disappearances. As highlighted in the report[[2]](#footnote-2):

1. Arrested persons were often taken away ‘abduction style’ in unmarked vehicles by persons in civilian clothing who did not produce any identification nor state why the person was being “arrested”.
2. Arresting “officials would identify themselves but did not issue an arrest receipt to family members.
3. Arresting officers would not inform the family where the person was being taken, and family members would not be aware of the whereabouts of the abducted/arrested person for several hours, days or in some cases even months When family members went to the area police station, the arrested person would not be there and the police would deny knowledge of the arrest.
4. Arrested persons were held at unauthorized places of detention, such as dilapidated houses, derelict buildings, forests, and even a temple, for several hours to several days before being produced at a police station where their detention was formally recorded. Persons held in such places reported being subjected to torture during this period and their family members would not be aware of their whereabouts.
5. Arrested persons would be transferred from one place of detention to another, but family members and legal representatives would not be informed of the transfer, and would therefore by unaware of the person’s whereabouts.

*Section 16 of the PTA*

Section 16 of the PTA allows a confession that is given to a police officer not below the rank of Assistant Superintendent of Police (ASP) in the absence of a legal representative, to be admissible as evidence against the person during trial. Arrests by police without following due process, which amount to abductions, and detention in unauthorized places of detention without the family or legal representatives being informed of the person’s whereabouts were undertaken with the purpose of extracting a confession from the “arrested” person. This is illustrated by the testimonies of persons arrested under the PTA which are documented in the report of the national study of prisons conducted by the Human Rights Commission of Sri Lanka.

*Section 10 of the Drug Dependent Persons (Treatment and Rehabilitation) Act*

The Drug Dependent Persons (Treatment and Rehabilitation) Act contains provisions that allow the state to administer compulsory treatment to persons identified as “drug dependent”, and sets out the manner in which drug rehabilitation centres in Sri Lanka have to function.

Section 10 of the Act requires an Officer-in-Charge of a police station, upon receiving information (from anyone) that “any person is a habitual user of dangerous drugs and has since become a drug dependent person”, is to take steps to present the person for a medical examination to a Medical Officer. In practice, this means that any person can be arbitrarily arrested and detained based on unverified information received by the said police officer. The Act requires the Medical Officer to state “the reasons for his observations that such person is or is not a drug dependent, and details as to the extent of such person’s drug dependence". It requires the report of the medical examination to be submitted to the police station, and if the report states the person has a drug dependence, s/he must be produced before a Magistrate.[[3]](#footnote-3) The Magistrate shall then order the individual concerned to be sent for compulsory treatment and rehabilitation at any drug treatment centre licensed by the Act.[[4]](#footnote-4)

Empowering law enforcement agencies to apprehend and detain persons they suspect ‘have become drug dependent’, equates to providing the police with the power to arbitrarily deprive persons of liberty without due process. The provision does not stipulate whether the person is to be arrested in order to be sent for medical examination, the period within which the person should be sent for medical examination, nor the period within which the report has to be submitted or whether the person continues to be in police custody while the report is being prepared. Therefore, there is room for grave abuse of power by police personnel. When a person is arrested/taken away by the police for a medical examination, and kept at a police station until the medical report is received and the person is produced before a magistrate, often families are not informed of the person’s whereabouts and the person’s due process rights are violated.

*The Anti-Terrorism Bill*

In March 2023, the government gazetted the Anti-Terrorism Bill to replace the PTA. While the Bill contains a few safeguards to be adhered during arrest and detention, including the legal requirement to issue an arrest receipt to the family of the arrested person, the Bill also contains certain egregious provisions which creates the risk of short-term enforced disappearances.

For instance, under Section 20 of the Bill, members of the armed forces who are authorized to conduct arrests under the Bill, do not have to handover the arrested person to the police immediately or even as soon as possible after arrest but are given twenty-four hours to do so.[[5]](#footnote-5)

The Bill was met with national and international outrage[[6]](#footnote-6) and was challenged in the Supreme Court for being incompatible with fundamental rights guaranteed by the Constitution of Sri Lanka. The Minister of Justice has since stayed the progress of the Bill through the Parliamentary process and asked for recommendation from the public on changes to be made to the Bill[[7]](#footnote-7).

Legal frameworks and practices to prevent short-term disappearances

Despite several laws and regulations that have been issued in Sri Lanka to protect persons deprived of liberty from falling outside the protection of the law and being held in secret detention for any measure of time, the procedures are often observed in the breach.

1. Section 36 of the Code of Criminal Procedure Code requires police officers to produce the person arrested before a Magistrate ‘without unnecessary delay’ and Section 37 of the same act states that an officer should not detain or confine a person arrested without a warrant in custody for a period exceeding twenty-four hours, exclusive of the time required for the journey from the place of arrest to the Magistrate.
2. Section 15 of the International Convention for the Protection of All Persons from Enforced Disappearance Act (No. 5 of 2018) states that no person shall be held in secret detention and 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. The act also makes it an offence for a public officer and any authority acting with the authorization, support or acquiescence of the State to:
3. arrests, detains, wrongfully confines, abducts, kidnaps, or in any other form deprives any other person of such person’s liberty; and

(b) (i) refuses to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty; or (ii) conceals the fate of such other person; or (iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person.[[8]](#footnote-8)

1. Section 28 (1) of the *Human Rights Commission of Sri Lanka Act* states that when a person is arrested or detained under the Prevention of Terrorism Act it shall be the duty of the person making the arrest or order of detention, forthwith or not later than 48 hours from the time of the arrest or detention, to inform the Commission of such arrest or detention and the place at which the person is being held in custody or detention. If an officer is found guilty of failing to do so, the person can be sentenced to imprisonment not exceeding one year or a fine not exceeding five thousand rupees or both. Despite this, it was not uncommon for the Commission not to receive notification of arrests under the PTA promptly.
2. *Presidential Directives on Protecting the Fundamental Rights of Persons Arrested and/or Detained* issued by President Chandrika Kumaratunga, later re-issued by President Mahinda Rajapaksa on 7 July 2006 and recirculated by former Secretary of Defence, Gotabhaya Rajapaksa on 12 April 2007 to the Heads of the Armed Forces and of the Police, which set out basic rules that have to be followed in relation to the arrest and detention of persons. The Directives state that ‘that no person shall be arrested or detained under any Emergency Regulation or the Prevention of Terrorism Act No. 48 of 1979 except in accordance with the law and proper procedure, and by a person who is authorized by law to make such an arrest or order such detention’. The Directives require the arresting officer to:
* Identify himself to the person being arrested or a relative or friend of such person
* Inform the arrested person of the reason for the arrest
* Allow the detained or arrested person to communicate with a relative or friend to inform of his whereabouts
1. Directives issued by the HRCSL in 2016 on Arrest and Detention under the PTA, which were re-issued by President Sirisena, state that any person arrested under the PTA shall be informed of the reason for arrest and an arrest receipt, stating the name and rank of the arresting officer, the time and date of arrest, and the place at which the person will be detained should be issued. The directives further require that the arrested person be allowed to communicate with a family member, relative or friend and shall be allowed to inform them of his whereabouts if the person is arrested when not in presence of family or relatives[[9]](#footnote-9).
2. In August 2022, the Inspector General of Police (IGP) issued a letter to all police departments outlining due process safeguards to be maintained during arrests and affirmed that “no person shall be held in secret detention” and “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 choices, subject only to the conditions established by written law”.[[10]](#footnote-10)
3. In 2020 - 2023, a series of “encounter deaths” of persons in police custody were reported, where persons held at police stations would be escorted out of the police station by police officers and taken to a certain location allegedly to retrieve evidence. The family members or legal representatives would not be informed of the person being taken out of the police station. The police would then open fire against the detainees who allegedly try to escape, to prevent them from escaping, and would then be killed. The author has recorded at least ten such incidents since 2020. In response to a Supreme Court order directing the IGP to produce guidelines to prevent “encounter deaths”, in April 2023, the IGP issued a circular which required inter alia police officers to allow persons in custody to meet with their relatives, attorneys and members of the HRCSL.[[11]](#footnote-11)
4. **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’?**

Procedural questions that may arise include what protective mechanisms should be in place after the person is arrested/abducted and until they are brought to an authorized place of detention and their detention is formally recorded. During the immediate post-arrest period family members and legal representatives do not have access to the arrested person as they are not allowed to accompany them. Give the failure to follow due process in Sri Lanka is systemic, there is no guarantee that a person will be taken to an authorized place of detention follow the arrest. Hence, the period after the arrest is critical as it is during this period the person is most vulnerable to short-term disappearance.

During the journey from the place of arrest to a place of detention (authorized or unauthorized), the arrested person cannot communicate with their family member or legal representative and while enroute, their exact whereabouts cannot be ascertained. Irrespective of the length of the journey, during this time period, the arrested person is effectively held incommunicado, as they cannot be contacted by their family members or legal representative, particularly where there exists no legal provision that compels the arresting entity to bring the arrested person directly to the area police station, without delay.

This is particularly concerning when persons are taken out of authorized places of detention such as police stations and taken to unknown locations for the purpose of ‘investigations’, without their families or legal representatives being informed, and are thereby held incommunicado. As described above, the incidences of “encounter deaths” demonstrate the risks associated with transferring a person to an unknown location to ‘retrieve evidence’, as it places them outside the protection of the law and any kind of judicial or other independent oversight and protection.

Despite the existence of numerous laws and regulations that require the arresting entities to inform the families of arrested persons where they will be taken to and issue arrest receipts outlining the same, arresting entities often observe such procedures in the breach. This begs the question how arresting officers, primarily police officers, who are used to a departmental disregard for the rule of law and engage in unlawful conduct, ignoring human rights and due process standards with impunity, can be compelled to follow procedure when undertaking arrests and held accountable when they don’t.

With regards to holding police officers accountable, despite the existence of provisions such as Section 3 of the *International Convention for the Protection of All Persons from Enforced Disappearance Act* (No. 5 of 2018) which makes it an offence for police officers to refuse to acknowledge the arrest/detention, conceal the fate of the arrested person and not disclose the whereabouts of the arrested person, punishable by up to twenty-five years of imprisonment, to date, no charges have been pursued against arresting entities under this offence.

1. <https://www.newswire.lk/2023/06/07/police-use-tear-gas-water-cannon-to-disperse-protest-in-nugegoda/> [↑](#footnote-ref-1)
2. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> [↑](#footnote-ref-2)
3. Drug Dependant Persons (Treatment and Rehabilitation) Act. 2007. Section 10 (2) [↑](#footnote-ref-3)
4. Ibid. Section 10 (3) [↑](#footnote-ref-4)
5. <https://groundviews.org/2023/03/26/anti-terrorism-bill-the-good-bad-and-the-ugly/> [↑](#footnote-ref-5)
6. <https://www.hrw.org/news/2023/04/07/sri-lanka-reject-new-counterterrorism-bill> [↑](#footnote-ref-6)
7. <https://island.lk/new-anti-terror-bill-justice-minister-asks-for-submissions-from-public-civil-society/> [↑](#footnote-ref-7)
8. <https://www.srilankalaw.lk/gazette/2018_pdf/05-2018_E.pdf> [↑](#footnote-ref-8)
9. <https://hrcsl.lk/wp-content/uploads/2020/02/Guidelines-for-Implementing-the-Emergency-Regulations-English.pdf> [↑](#footnote-ref-9)
10. <https://www.ft.lk/news/BASL-calls-on-IGP-to-ensure-all-arrests-happen-according-to-legal-procedures/56-738529> [↑](#footnote-ref-10)
11. <https://www.sundaytimes.lk/230402/news/in-response-to-sc-order-police-chief-issues-guidelines-to-prevent-encounter-deaths-516301.html> [↑](#footnote-ref-11)