

# PERSISTENCE AMIDST IMPUNITY: THE STRUGGLE FOR TRUTH AND JUSTICE FOR ENFORCED DISAPPEARANCES



வலிந்து காணாமல் ஆக்கப்பட்டவர்களின் உறவுகளின் சங்கம்  
வடக்கு கிழக்கு மாகாணங்கள்

Association for Relatives of the Enforced Disappearances  
North & East Provinces

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Association for Relatives of the Enforced Disappearances  
North & East Provinces

**DEDICATED TO**

# Table of Contents

1.	Executive Summary	5
2.	Introduction	7
3.	Scope and Methodology	9
4.	Part One: Background on Enforced Disappearances	10
5.	Part Two: Sri Lanka's Failures	12
	The Harm of Investigative Commissions	13
6.	Part Three: ARED Protests - Beginnings of the Continuous Protests	19
	Protest Demands: Looking for International Solutions	20
	Response to ARED Protests	22
	Relevance of Protests Today	25
7.	Part Four: Moving Forward - Impact on protestors	27
8.	Recommendations	29
	No Trust in Domestic Mechanisms	29
	Centering Victims	29
	Documentation	30
	Justice and Accountability from International Community	31
10.	Conclusion	32

# Executive summary

Since February 2017, the Tamil families of the disappeared in Sri Lanka have been continuously protesting under the umbrella of The Association for Relatives of the Enforced Disappearances North & East (ARED), demanding answers from the Sri Lankan state regarding the fate of their loved ones who have been victims of enforced disappearances.

This movement was borne from the dire need for accountability and justice measures in Sri Lanka to meaningfully address the crimes committed against the Tamil people by the state. Enforced disappearances have particularly been an issue in the country for many decades, with thousands of victim families reporting state actors being responsible for taking away their loved ones in multiple manners. State officials across regimes have delivered statements and established various domestic investigative bodies. Still, all such responses have been ineffective in exposing the truth and have created an environment of impunity for such crimes. Further, they have caused more harm to Tamil victims that voiced their issues and lodged complaints to such commissions; Tamil victims have been exposed to aggression, dismissiveness, surveillance and increased safety risks at the hands of the state in retaliation for their complaints.

ARED continues their protests today to seek answers regarding the whereabouts and fates of their disappeared loved ones. These protests are rooted in a demand for international intervention and justice for crimes that have been committed against Tamil people historically, one of which was enforced disappearances. Their protests also stand against ongoing state acts to militarize and “Sinhalize” Tamil lands in the North and East and seek a long-term political solution for Tamil people. The protestors fundamentally lack any trust in the state due to its track record, and therefore cannot envision any form of domestic accountability, or put their faith in their state to deliver the answers that they are seeking. This is the reason for their focus on international forms of accountability; even if the processes are lengthy, the potential for an international solution outweighs the impossibility of a domestic solution in their eyes.

The protests, as they are now, cannot be sustained for a very long time. Since the beginning of these protests in 2017, over 200 protestors have passed away without any answers regarding their missing family members. The trauma that victim families already carry due to the loss of their loved ones has been compounded by the violence they have experienced at the hands of the state. As they advocate for answers, the under-resourced nature of this movement and the lack of succession with protestors add further worry and mental anguish for protestors.

Accountability in Sri Lanka is a multifaceted issue and working towards progress requires meaningful engagement with the demands and experiences of ARED protestors. To support

ARED's goals, allies must acknowledge the Sri Lankan state's continuous efforts to suppress, harm, and eliminate Tamil voices, and accept that Tamil protestors cannot trust any domestic mechanisms due to their past experiences. This requires the amplification and prioritization of victim voices, and granting them the platforms and resources needed to relay their demands. Support is also needed with documentation efforts, to assure that these stories are not lost and could potentially be used for prosecutions in the future. ARED protestors would ultimately benefit from any international levers that could ultimately result in investigations or prosecutions of state officials that have committed crimes against Tamil people. This includes advocacy and support to push for an international investigation, a UN referral to the ICC, or other actions that would increase pressure on the Sri Lankan state.

# Introduction

“  
Until our last breath, we will continue  
searching for our disappeared loved ones.

WOMAN IN AMPARAI

”

Since February 2017, there has been a continuous, ongoing, women-led protest in the Northern and Eastern regions of Sri Lanka, that has been demanding accountability from the state for its historic and ongoing violence against the Tamil people. Tamil families of the disappeared in Sri Lanka have been protesting under the umbrella of The Association for Relatives of the Enforced Disappearances North & East (ARED), demanding answers from the Sri Lankan state regarding the fate of their loved ones who have been victims of enforced disappearances.

The purpose of this report is to outline the experiences of the victims that make up ARED, and highlight their calls for an international mechanism to deliver justice and accountability for crimes against the Tamil people. Despite calls for justice and accountability from the Tamil community for enforced disappearances (as well as other crimes and injustices), the Sri Lankan state has, through many apparatuses, continued to suppress and dismiss Tamil voices. This report highlights the Tamil women-led advocacy that has been happening in this space, articulates the reasons for which the ARED protests have evolved to their current form, and outlines why these protests continue to be of importance not only to victim communities, but to the ongoing project of accountability on the island as a whole.



The first part of this report summarizes the history of enforced disappearances in Sri Lanka, to provide context for the extent of this issue. The second part of the report outlines the expe-

periences of victim families as they reported enforced disappearances and sought information about their loved ones from various state-established commissions. Their stories detail the abuse, harm, and dismissal that they have faced at multiple junctures as they tried to seek answers from the Sri Lankan state, and demonstrate why the Sri Lankan state cannot be trusted to deliver justice to the Tamil victims of genocide.

The third part of this report will discuss the development of the ARED protests and their demands. Based on the past experiences of protestors that have eroded their trust in the Sri Lankan state, this section expands upon the positioning of their demands towards the international community. Through their protests, they have been calling out to the UN and to other international actors to intervene and provide fair, transparent avenues for justice in Sri Lanka. This section also highlights the reception of the ARED protests domestically and internationally; while the state refuses to meaningfully engage with protestors, and continues to inflict physical, emotional, and legal harm onto them, the international community has also failed to grasp the extent to which protestors are being subjected to ongoing violence and racism through state actions and policies.

The fourth part outlines the state of the protests today, what support is needed to move ARED's demands forward, and what can be done by international actors to amplify and act in solidarity with the ARED protestors. The current circumstances of the protestors themselves are also highlighted, and the noted recommendations should guide any international actors' engagements with human rights issues in Sri Lanka.

We acknowledge that throughout the duration of the armed conflict, disappearances were committed by many groups, including state forces, paramilitary forces, and other insurgency groups. However, the focus of this report, as well as the demands of the ARED, are directed towards the Sri Lankan state and its forces. Enforced disappearances, as well as the impunity for these incidences that continues today, must be viewed as one element of the persecution, discrimination, and genocide experienced by Tamil people in Sri Lanka. Although the conversation on accountability and recourse for all disappearances continues to evolve and develop, the community's demands of the Sri Lankan state have been clear for decades.

## **Scope and Methodology**

In June 2023, two researchers conducted consultations with protestors from across the Northern and Eastern provinces, who are members of the Association of the Relatives of the Enforced Disappearances. A total of 40 protestors, with 3-7 protestors from each of the 8 districts in the Northern and Eastern provinces (Amparai, Batticaloa, Trincomalee, Vavuniya, Jaffna, Mullaith-eevu, Kilinochchi, and Mannar), were consulted in focus groups. The information that follows in this report has been anonymized for the safety of the protestors, who are already heavily surveilled and threatened by Sri Lankan state forces. Their individual stories have been synthesized, both for safety and due to their experiences being common across the community. In addition to interviewing the protestors, key interviews were conducted with various civil society, state, and INGO actors. Where helpful, these accounts have been supplemented with secondary sources.

# PART ONE:

## Background on Enforced Disappearances

— “ —

Is it fair to ask the perpetrator for justice?

WOMAN FROM BATTICALOA

” —

Sri Lanka is often cited as one of the countries with the most enforced disappearances, with estimates of missing persons ranging from 60,000 to 100,000 since the 1980s.<sup>1</sup> Tamil people were targeted and forcibly disappeared by Sri Lankan state forces, including the military, police, and paramilitary forces. This continued throughout the armed conflict that began in 1983 and after its end in 2009.

The root causes of ethnic conflict in Sri Lanka date back to the country's independence in 1948. The transfer of power from the British Crown to the Sinhalese majority upon independence allowed for Sinhala-Buddhist principles and values to permeate the politics and economics of modern Sri Lanka, even when the island's precolonial history did not support these narratives.<sup>2</sup> Filling the void left by the island's former colonizers, Sinhala-Buddhist nationalism was institutionalized through constitutional amendments in the 1970s and other state policies.<sup>3</sup>

This marginalization of the Tamil minority enabled anti-Tamil pogroms which killed and displaced thousands of Tamils, and destroyed important Tamil relics.<sup>4</sup> While Tamil parties and student activists were engaging in parliamentary politics to seek solutions, this violence also influenced the formation of militant movements, including the Liberation Tigers of Tamil Eelam (LTTE), and calls for a separate Tamil state in the Northern and Eastern Regions of the island (Tamil Eelam).<sup>5</sup> The anti-Tamil pogroms of Black July in 1983 are often cited as having sparked the full-fledged armed conflict between the LTTE and the Sri Lankan state.

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1 Amnesty International, “Still No Answers: An Update On The Rights Of Victims Of Enforced Disappearances In Sri Lanka” (2013) at 4, online (pdf): Amnesty International <[www.amnesty.org/en/wp-content/uploads/2022/03/ASA3752782022ENGLISH.pdf](http://www.amnesty.org/en/wp-content/uploads/2022/03/ASA3752782022ENGLISH.pdf)>.

2 Sujith Xavier, Amar Bhatia, & Adrian A Smith. “Indebted Impunity and Violence in a Lesser State: Ethno-Racial Capitalism in Sri Lanka” (2022) 25:2, J of Int Economic L 276 at 288-8.

3 PEARL Action, State-Sponsored Sinhalization of the North East (2022) at. 9-12 (pdf): PEARL <[pearlaction.org/wp-content/uploads/2022/03/State-Sponsored-Sinhalization-of-the-North-East-March-2022.pdf](http://pearlaction.org/wp-content/uploads/2022/03/State-Sponsored-Sinhalization-of-the-North-East-March-2022.pdf)> [PEARL Sinhalization Report].

4 See e.g.: Tamil Guardian, Remembering the 1958 Pogrom, 22 May 2020; A. Bandarage, The Separatist Conflict in Sri Lanka: Terrorism, Ethnicity, Political Economy, 2008, p. 76; Al Jazeera, The Fear Inside Ss: Confronting Sri Lanka's past, 4 February 2018; T. Manoranjan and M. Sivaselvachandran, Sri Lanka's State Responsibility for Historical and Recent Tamil Genocides, in *Opinio Juris*, 24 July 2020; People's Tribunal on Sri Lanka, p. 16.

5 Report of the OHCHR Investigation on Sri Lanka, 16 September 2015, (A/HRC/30/CRP.2\_E) paras 47-48 [OISL Report].

The United Nations defines enforced disappearances as “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.”<sup>6</sup> Sri Lankan armed forces were enabled by the overbroad mandate of the Prevention of Terrorism Act of 1979 (PTA) in carrying out enforced disappearances in this manner.

The PTA, initially enacted as a war-time measure, allowed the declaration of national states of emergency with little to no oversight, and gave armed forces broad powers to arrest, detain, and investigate anyone that they suspected of terrorism against the state, while suspending the legal rights of those that were detained.<sup>7</sup> Sri Lankan armed forces wielded these sweeping powers against Tamil civilians, under the guise of targeting LTTE insurgents. With this mandate of “terrorism prevention,” Sri Lankan armed forces engaged in many atrocities, including enforced disappearances, the targets of which were overwhelmingly Tamil civilians.

— “ “ —  
This government shows  
different faces for different groups.  
WOMAN FROM BATTICALOA  
— ” —

The stories of disappeared family members shared by ARED members were often similar. Many shared stories of their loved ones being arrested under suspicion of being terrorists, arrested at checkpoints as they were traveling for work or other reasons, or carried away in ambulances. Particularly in the final stages of the armed conflict and the period that immediately followed, many shared that they personally surrendered and “handed over” their family members to army officials. Men and women of all ages were often taken away en masse in buses, and others became victims of “white van” enforced disappearances, where individuals were kidnapped and taken away in unmarked white vans, never to be seen again. Protestors identified, through either their own experiences or from other eyewitness testimonies, which state forces in their respective districts were responsible for taking their family members away, with allegations against armed forces, Special Task Force (STF) officers, navy forces, intelligence officers, and local police officers.

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6 International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010.

7 US Department of State, “Country Reports on Terrorism 2020: Sri Lanka” (2020) online: US Department of State <<https://www.state.gov/reports/country-reports-on-terrorism-2020/sri-lanka/>>.

## PART TWO: Sri Lanka's Failures

“

The commissions were created to  
save the government, not to help us.

WOMAN FROM KILINOCHCHI

”

Enforced disappearances have long been reported in Sri Lanka, with civilians and international NGOs putting pressure and engaging in advocacy campaigns against the Sri Lankan state. On face, state officials across regimes have delivered statements and established various domestic investigative bodies in the past several decades. However, all state responses to the allegations of enforced disappearances have been equally ineffective in exposing the truth and have only caused more harm to Tamil victims.

To date, no state interventions have delivered accountability or justice for these crimes in a meaningful way; instead, victims that voiced their issues and lodged complaints to the state have been met with aggression, dismissiveness, and increased safety risks. For victims, the actions of the state in response to enforced disappearances have only further destroyed any trust or hope that they may have had in receiving answers from the state. The state's hollow actions on this issue go hand-in-hand with their active militarization and Sinhalization initiatives in the Tamil lands of the North and East; historically and today, they have sought to suppress and abolish Tamil activism to cement Sinhala-Buddhist supremacy on the island.



Protestors shared that for many years, they searched for their disappeared loved ones ardently, exhausting every possible avenue that was available to them. Most families began their search for their loved ones through filing police reports. However, police forces often did not note the race of the missing individual, nor did they collect adequate information on the circumstances of their disappearance. As a result, cases were rarely investigated or followed up upon by the police.

## The Harm of Investigative Commissions

— “  
The Sri Lankan government did not extend  
its care to its citizens.

WOMAN FROM VAVUNIYA

” —

To victims, state-established commissions of inquiry initially appeared to be avenues for finding answers and seeking accountability for their disappeared loved ones. Since the 1990s, the Sri Lankan state has created and dismantled various iterations of investigative bodies, including the Commissions of Inquiry, multiple Presidential Commissions initiated by different presidents, Three Zonal Commissions, the All Island Commission, and the Lessons Learnt and Reconciliation Commission (LLRC). However, all these institutions have proven to be ineffective, insufficient, uninterested in validating the experiences of victim communities, and ultimately unfit to deliver any form of accountability.

State commissions have been widely criticized for their lack of transparency, conflicts of interest, and limited powers and scope to influence systematic change.<sup>8</sup> These investigative bodies are also characterized by an ongoing refusal to bring state officials to account. While information pertaining to thousands of allegations of enforced disappearances were collected by these commissions, this information has not been publicly reported, nor have most of these cases been pursued in Sri Lankan courts of law. This has created an environment of impunity that has emboldened Sri Lankan political and security leaders to commit further international crimes against the Tamil community without any fear of repercussions.<sup>9</sup>

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8 OISL Report, *supra* at note 9, paras 476-524.; Charles Petrie, UN. Secretary-General, UN. Internal Review Panel on United Nations Action in Sri Lanka “Report Of The Secretary-General’s Internal Review Panel On United Nations Action In Sri Lanka” (November 2012) at para 38, online (pdf): United Nations Digital Library <<https://digitallibrary.un.org/record/737299?ln=en>> [UN Internal Review Panel Report]. These reports chronologically outlines details on all of the commissions, and the concerns for safety, transparency, and accountability that plagued them all.

9 OHRC, Situation of human rights in Sri Lanka - Comprehensive report of the United Nations High Commissioner for Human Rights, UN Doc A/HRC/51/5, October 2022, online: <[www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-united-nations-high](http://www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-united-nations-high)> at para 14.

— “ —  
Why are you killing us in the process of  
making your living?

WOMAN FROM BATTICALOA

” —

Most ARED protestors spoke about their experiences with the state commissions that were established after the conclusion of the armed conflict, namely the Presidential Commission of Inquiry Into Complaints of Abductions and Disappearances (also known as the Paranagama Commission) and the LLRC. Despite these commissions happening over different time periods, the experiences reported by victims were analogous: the process of attending all commissions of inquiry has destroyed any hope or faith that the women held about their disappeared family member being found or accounted for by the state.

Although some Tamil victims benefited from the bureaucracy of these commissions, ARED protestors unanimously expressed that these commissions did not provide any of the support or answers that they were seeking from the state. Most of the commissioners, police officers, and other officials that were present at any commission did not speak Tamil, and did not provide complainants with clear legal resources or direction. This only reinforced the existing mistrust and fear that victims felt in engaging with the state. The commissioners also collected original documents from complainants, including important files, letters, complaints, and other records from many, which were never returned to most victims. This left Tamil victims, who could not communicate in English or Sinhala, to feel isolated and uninformed as they relayed their complaints.

Many women described the demeanor and language used by state officials as apathetic, and they felt there was an overarching disregard of the severity of their complaints. Women were asked to repeat their stories over and over to multiple commissioners in one sitting. In this process, they were harshly interrogated by officials regarding details in their complaints, and were often asked dismissive, condescending questions. Many felt that at this juncture, the state was seeking to investigate the complainants more than it was seeking to investigate the enforced disappearances themselves.

One woman described that as she repeated her story to multiple officials in one sitting, they would point at minute discrepancies between each repetition of her story, and accuse her of submitting an unreliable complaint. Others mentioned that they were told by commissioners that their family members had probably fled the country, or were LTTE fighters who died in the conflict. Ultimately, in a space that was created to deliver answers and validate the suffering of the Tamil community, complainants felt that state officials were dismissive, condescending, and threatening towards them. The repetitive and dehumanizing nature of these commissions

served only to retraumatize victims. As victims left each commission with no promise of answers, follow up, or further details, they were left feeling unsafe, hurt, and hopeless.

— “ —  
Without a care, they asked us questions,  
as if they were killing time.

WOMAN IN KILINOCHCHI  
(referring to state commissioners)

” —

The few cases that do make it to court, such as the habeas corpus cases filed by some ARED members,<sup>10</sup> have been dismissed due to a “lack” of specific details in their cases; while complainants and witnesses have information on the time and place of incidents, as well as who took their loved ones, cases had been dismissed because complainants could not provide the license plate number of the vehicle that took away their loved ones.<sup>11</sup> Ananthi Sasitharan, an elected minister in the Northern Province, is notorious for her advocacy on this front, as she continues to seek answers for the enforced disappearance of her husband, a former LTTE cadre who surrendered to the state in the final days of the conflict. Despite her advocacy making waves domestically and internationally, she has been left awaiting answers. Her demands for answers from the state have also met with threats, including that of rehabilitation from the Ministry of Defense to supposedly “prevent her from propagating separatist sentiments.”<sup>12</sup>



10 These cases have been filed by members in \_ courts, to produce their disappeared loved ones in court, or to provide an answer for their whereabouts.

11 <https://www.tamilguardian.com/content/mete-out-justice-we-die-families-disappeared-tamils-un-high-commissioner-interviews>.

12 [https://web.archive.org/web/20140117184652/http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=95913](https://web.archive.org/web/20140117184652/http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=95913)

These characteristics plagued the more recent Office on Missing Persons (OMP) as well.<sup>13</sup> This state office, established in 2017, came to be in response to Resolution 30/1 of the UNHCR.<sup>14</sup> Simultaneously, the domestically-established Consultation Task Force on Reconciliation Mechanism (CTF) was in the midst of speaking with Tamil victims about their past experiences with state commissions, and the resulting harm they experienced from state actors. The CTF process provided a long-overdue platform for Tamil victims to begin elaborating upon the shortcomings of past commissions, and sharing their views on how a state process could meet their goals of justice and accountability. However, none of the recommendations given by Tamil victims in the CTF's final report were meaningfully incorporated into the OMP's mandate or operations. When questioned, OMP officials failed to provide any rationale or justification for this exclusion of Tamil victims voices and perspectives from their operations, thereby further disenfranchising them.

— “ —  
There is no need or use for OMP – it is a  
government action for optics that is portraying  
itself as having engaged with victims  
WOMAN IN KILINOCHCHI  
” —

Establishing the OMP allowed Sri Lanka to save face internationally, but did very little to alter the state's treatment of victims domestically. The ignorance of their recommendations made it clear to Tamil victims that the OMP was yet another ineffective state measure with no interest in delivering answers to them. Victims were enraged by the OMP's insistence that families accept death certificates and compensation in lieu of answers regarding the fate of their loved ones at the hands of the state; this was widely recognized as yet another attempt by the state to dismiss the role of state actors in enforced disappearances, and to move on from the issue of state accountability entirely. The mistrust felt by Tamil victims worsened in 2020, as the Rajapakse state appointed problematic persons who further undermined the independence and credibility of the OMP.<sup>15</sup> As a result, ARED protest calls to date proclaim that Tamil victims are not interested in engaging with the OMP or receiving any monetary compensation from the state; their goal is to uncover the truth of what happened to the victims of enforced disappearances.<sup>16</sup>

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13 Jason Burke and Amantha Perera, “Missing Persons’ Office chief quits, citing lack of ‘independence’” (May 2022), online: The Morning LK <<https://www.themorning.lk/missing-persons-office-chief-quits-citing-lack-of-independence/>>.

14 A/HRC/RES/30/1 at clause 4.

15 Office of the High Commissioner of Human Rights, “A/HRC/51/5: Situation of human rights in Sri Lanka - Comprehensive report of the United Nations High Commissioner for Human Rights” (04 October 2022) at para 42 [A/HRC/51/5].

16 <https://www.tamilguardian.com/content/families-disappeared-mannar-demand-justice-and-accountability-forcibly-disappeared-relatives>

“ We want justice, not money.

WOMAN IN TRINCOMALEE

”



The interactions of victim families with state forces after they submitted their complaints clearly demonstrate the corruption, independence, and safety issues that plagued these state mechanisms. Occurrences of harassment, surveillance, and intimidation by state forces are consistently reported amongst all victims who reported enforced disappearances to these commissions. One protestor shared that as soon as she left the premises of a commission, her documents were stolen out of her hands by an unknown individual. Many protestors spoke to how Criminal Investigation Department (CID) officers or police officers would, instead of providing answers or investigation updates, arrive at their homes to ask if the families themselves had any further information, and would repeatedly ask them the same questions about their complaints in order to “verify” information instead of investigating the complaints or the information collected. In more extreme cases, families explained that they had been extorted by both state and unknown actors. In multiple districts, women received anonymous calls asking for large sums of money in exchange for information regarding their disappeared loved ones, or for their outright release from state camps and prisons.

— “ —  
The prosecution of war criminals cannot be  
achieved through harassing victims  
regarding their accounts of disappearances

WOMAN IN KILINOCHCHI

” —

As such, no commission or state action has yielded any answers for Tamil victims. For decades, the state has been unable to account for any victims of enforced disappearances, or provide answers regarding what may have happened to any such missing persons. Despite the state's persistence in collecting information and continually harassing those that did provide their testimonies to various commissions, there is a lack of political will to act on this information to locate missing persons, or hold any perpetrators accountable for the commission of any crimes. Ultimately, victims have been left in the dark with no next steps, no updates on their cases, and their questions ignored by state officials. The frustrations and anguish that resulted from these experiences have led protesting families to refuse engagement with any other state mechanisms.

# PART THREE:

## ARED Protests

### Beginnings of Continuous Protests

“

We protest to assert  
the need for our own space.

WOMAN IN MANNAR

”

As the state sought to establish the Office of the Missing Persons in 2017, the women of ARED began the continuous protest against the Sri Lankan state that continues to this day. They staunchly opposed the establishment of yet another hollow state mechanism and made clear that they had no trust in the Sri Lankan state to provide any recourse. This protest was not new, as many Tamil victims have mobilized and protested ineffective government investigations and demanded answers in the past, but the continuous, ongoing nature of this mobilization, as well as its span across the 8 districts of the Northern and Eastern provinces, is to be noted.

Through peaceful demonstrations and marches, they took to the streets across the 8 districts in the North and East, wielding photos of their missing loved ones and posters plastered with demands for answers and justice. In addition to organizing daily demonstrations and marches across 8 districts, ARED protestors have been able to meet with various international high commissioners in Sri Lanka, as well as attend and speak at UNHRC sessions over the past few years in order to detail their experiences, and express what justice and accountability look like for them.



— “ —  
We are protesting on our own  
without any other supports.

WOMAN IN MULLAITHEEVU

” —

## Protest Demands: Looking for International Solutions

— “ —  
We are not willing to go to the government  
and receive the scraps that they give us

WOMAN IN BATTICALOA

” —

The demands of the ARED are as follows<sup>17</sup>:

1. We want to see the judgment of Justice before the end of our lives. Therefore, all those responsible for genocide against us, including Mahinda and Gotabaya Rajapakse, should be brought to Justice at the International Criminal Court (ICC).
2. The International Community should come forward to arrest Gotabaya Rajapaksa through the international judicial mechanism regardless of which country he is hiding in, and bring him before the International Criminal Court for the genocide committed by him against the Tamil People.
3. Even today, the Sinhala Army, which is responsible for the disappearance of our children, is occupying our Lands. It is the same Army that is constantly threatening us and continues to keep us in a state of panic. This army must be removed from our lands immediately.
4. Following the war of aggression against us, the Sinhala Buddhist state is rapidly carrying out Sinhala Buddhisisation by occupying our lands and Temples. This activity should be stopped immediately, and the land should be handed over to their rightful owners.
5. Our relatives languishing as Tamil political prisoners in jail should be released immediately without any conditions.
6. The Tamil people entitled to self-determination should have the opportunity to decide their political faith. A permanent political solution must be provided through the internationally monitored referendum among people and their descendants who lived in the Northern and Eastern provinces on and before February 4th, 1948.

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17 PEARL Action, “The Association for Relatives of Enforced Disappearances (ARED) have released a statement calling for the UN High Commissioner for Human Rights @mbachelet to acknowledge their demands ahead of the September UNHRC session in Geneva.” (15 August 2022 at 5:47am) online: Twitter <[https://twitter.com/pearl\\_action/status/1559114510111326209](https://twitter.com/pearl_action/status/1559114510111326209)>.

When speaking of international justice, protestors refer to the ICC, and the UN as bodies that they see as fit to hold perpetrators accountable for their crimes and deliver answers regarding disappeared individuals. Most protestors understand that a prosecution at the ICC would require a referral from the UN Security Council, and understand that such a solution would require years of work and bureaucratic processes. Most are aware that Sri Lanka is not party to the Rome Statute, and therefore does not currently fall under the jurisdiction of the ICC. They also acknowledged their understanding of the difficulties in influencing the political will globally to put pressure on Sri Lanka, or to create any mechanisms that could supersede Sri Lanka's sovereignty to allow for an investigation.



Regardless of these limitations, ARED protestors remain steadfast in their demands being geared internationally due to their fundamental lack of trust in the Sri Lankan state. After decades of the Sri Lankan state continuing to suppress and harm Tamil voices, protestors cannot envision any form of domestic accountability, and cannot put their faith in their state to deliver the answers that they are seeking. In their eyes, the potential for an international solution outweighs the impossibility of a domestic solution. As a result, their protests' demands are aimed at the international community, consisting of both international organizations as well as individual states.

## Response to ARED Protests

“  
The Sri Lankan government is silently  
continuing to engage in a war against us.

WOMAN IN MANNAR

”

The Sri Lankan state has notoriously responded to Tamil protests through extensive intimidation and violent tactics<sup>18</sup> against peaceful protestors, not limited to threats, home invasions, and use of force. In such a way, protestors have been met with heightened violence and patronization from the state. At protest sites, there is an overwhelming police and military presence, often resulting in physical and verbal violence against protestors. Outside of the protests, protestors are heavily surveilled. Families have recounted that they receive constant calls and home visits from CID officials. CID officers reportedly interrogate protestors about their day-to-day activities and whereabouts, and threaten them to not attend any ongoing protests.



In most districts, legal action has been taken against the regional leaders of ARED. This has included arrests, imprisonment, court orders limiting their mobility, and district-wide open

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18 A/HRC/51/5 supra note 22 at paras 31, 39; Tamil Guardian, “Tamil families of the disappeared speak to Tamil Guardian at the UNHRC (3)” (19 September 2022) at 00:03:26s, online (video): YouTube <<https://youtu.be/Y7fXu-JARxTY>>.

warrants for arrest, which threaten their safety regardless of where they may be. These legal proceedings also often happen without due procedure, as leaders noted that they often do not receive adequate details regarding the justification of these warrants or arrests, nor are the documents always made available to them in Tamil.

— “

This government will not  
let us live or die in peace.

WOMAN IN TRINCOMALEE

” —

These conditions have been the same even as the protests have extended over three regime changes. Protestors have noted that in essence, they have seen no difference between the responses of the Sirisena, Rajapakse, and Wickramasinghe states, noting that “while the state has been actively surveilling us, and engaging in continuous suppression of our work, they have no plans to act on our demands.”<sup>19</sup>

The scope of the demands of the ARED, as well as the vast majority of the protestors and their leadership being entirely women, often leads to the dismissal of their protest as one that is “political,” thus becoming a movement that can be easily delegitimized by state actors. This characterization of ARED protestors as “politicized” and “disruptive” by non-Tamil state and civil society actors leads to patronizing behaviour by state officials, as well as the exclusion of these women in national dialogues about state accountability.<sup>20</sup> ARED leaders all mentioned that in 2018, they were granted a meeting with then-President Maithiripala Sirisena. At the time, this felt like a step in the right direction, as previous leaders had refused to engage with them outright. However, they found that even as they sat face-to-face with the President, their complaints were belittled, and Sirisena would often remove his translation earpiece, thus refusing to even listen to their statements.

— “

The state met with us in disdain, and  
did not keep the promises that they gave us.

WOMAN IN VAVUNIYA

” —

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19 Tamil Guardian, “Tamil families of the disappeared speak to Tamil Guardian at the UNHRC (2)” (19 September 2022) at 00:03:26s, online (video): YouTube <<https://youtu.be/YFmFocapFAM>>.

20 Dharsha Jegatheeswaran, “Heeding Victims’ Voices: The Struggle of Tamil Families of the Disappeared in Sri Lanka” (3 March 2021), online: Just Security <<https://www.justsecurity.org/75095/heeding-victims-voices-the-struggle-of-tamil-families-of-the-disappeared-in-sri-lanka/>>.

Due to the politicization of Tamil victims (who can be portrayed as threats to the normative legal order of Sri Lanka), the state is easily able to delegitimize their concerns, dismiss their protests, and engage in their own conceptions of accountability through structures and processes of their own creation. In this way, Sri Lanka's transitional justice project has fundamentally failed to meet the needs of Tamil victims; transitional justice for Tamils is simply not possible while Sri Lanka remains a Sinhala-Buddhist supremacist state.

On an international level, protestors have felt that there is generally pressure from international organizations and INGOs to cooperate with state initiatives for accountability. For example, as the ARED protests began around the same time as the establishment of the OMP, they were urged by many to engage with this commission even as they were protesting its very existence. As a litmus test, the leaders collectively decided to submit 5 cases to the OMP in 2017; to date, there has been no progress on these files, and no further details have been shared with the families of the individuals in question.

Despite the refusal of most ARED protestors to engage with the OMP, many have received letters from the OMP citing that their "files" require the submission of further documents and evidence to proceed. However, protestors note that these requested documents are ones that they have submitted to previous commissions, to which the OMP responded that they had lost previously submitted documents. In addition to such actions being in direct opposition to what Tamil victims have been advocating for, this causes further concern regarding the confidentiality of information that had been provided to previous commissions, and the sincerity of the officials involved in carrying forward the stated mandate of the OMP. The pressure to cooperate with the state reinforces the sovereignty of Sri Lanka comes at the cost of its Tamil civilians; it only serves to legitimize inadequate, hollow state apparatuses, and prolong the pain of Tamil people.

There is also a fundamental misunderstanding of the issues affecting Tamil people in the North and Eastern provinces. As noted previously, these areas are still suffering from the consequences of the prolonged armed conflict; long-term impunity for war crimes, militarization, and state-led land settlements are all issues that have a serious, detrimental impact on the day-to-day lives of Tamil people. However, these issues are not well-understood or acknowledged beyond the confines of the North and East provinces. The fundamental, and often intentional, misunderstanding of these issues faced by Tamil people contributes to the lack of meaningful engagement and allyship with Tamil protestors.

In October 2022, the UN Human Rights Council wrote that it "believes that the protest movement has offered a sense of Sri Lankans from all communities coming together around a vision

of greater equality, participation and democracy,” while Tamil demands were explicitly left out of the mainstream protests demands coming out of Colombo during the Aragalaya.<sup>21</sup> In 2023, as Sri Lanka continues to increase its colonization of Tamil lands and increases its violence against Tamil people protesting on their traditional lands, the UNHCR’s Core Group on Sri Lanka reports that they “welcome Sri Lanka’s initial steps towards addressing concerns around land returns, long-term detentions and corruption.”<sup>22</sup> Such statements represent an inherent disconnect between the demands of the protest and other international actors. The demands of the ARED protestors overtly note that their needs cannot be met by Sri Lankan state actors. However, the requirements of sovereignty constrains the United Nations, requiring it to operate within the bounds of the state and giving it the benefit of the doubt even when it has failed to meet the needs of its Tamil citizens.

## Relevance of Protests Today

— “  
We have yet to receive even a minimal  
update from the government until now,  
how can we expect a solution?  
” —

WOMAN IN KILINOCHCHI

ARED’s demands for accountability and justice are not new, and many movements and organizations locally and globally continue to advocate for measures that would hold perpetrators of mass violence, war crimes, and genocidal acts accountable. As it stands today, ARED is the largest, most consistent, and most visible group that is mobilizing in order to demand solutions for the Tamil people. Through extending their personal experiences of violence and victimization, ARED protestors have set the scope of their demands well beyond the issue of enforced disappearances. Understanding that the lack of progress on the issue of enforced disappearances is one of many issues of accountability in Sri Lanka, ARED’s protests are a means of seeking justice for the ongoing systemic violence against Tamil people as a whole. This is reflected not only in their protest demands, but in their consistent protests of solidarity with other issues impacting the North and the East. In recent times, this has included the issues of investigating mass graves, as well as protecting Tamil Hindu sites of worship against the tyranny of Sinhala monks.

— “  
The government is intentionally  
killing time through these commissions.  
” —

WOMAN IN MULLAITHEEVU

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21 A/HRC/51/5 supra note 22 at para 29.

22 <https://www.gov.uk/state/speeches/un-hrc53-core-group-statement-on-sri-lanka>

In 2023, as the Sri Lankan state is actively engaging in the creation of a National Unity and Reconciliation Commission (NURC), ARED and most Tamil civil society actors, have voiced their concerns against this development. They have made it clear that the Sri Lankan state is incapable of creating an adequate mechanism for justice, and that this NURC will be no different than the hollow commissions established by the Sri Lankan state in the past.<sup>23</sup> Through the continuous establishment of such commissions, the state demonstrates that it remains unwilling to meaningfully heed any calls for justice for the Tamil people. The repeated failure of state-led commissions has already eroded any trust that victims may have had in the state, and the harm that resulted from these processes is compounded for Tamil victims by the ongoing Sinhalization efforts in the North and the East. As such, for as long as the Sri Lankan state engages in systemic violence against the Tamil people, they will continue to be met with resistance from the Tamil community.

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23 <https://twitter.com/AdayaalamCPR/status/1681931127722848262/photo/1>

## PART 4:

# Moving Forward - Impact on Protestors

“

I am not the only one  
experiencing this loss, no?

WOMAN IN TRINCOMALEE

”

The impact of the Sri Lankan state on these individuals is clear, both through its past and current actions. The protestors themselves are victims of an armed conflict, having been displaced, injured, lost family, and more. Since the end of this conflict, these victims continue to be subjected to the violence of the state. Many protestors spoke to the mental, emotional, and physical toll of their search for their loved ones. At various junctures in their journeys, any small indications of hope that a new commission brought on were immediately destroyed by the dismissal and violence of the state. The process of submitting the same complaints to multiple commissions, and going through the same processes repeatedly has only served to retraumatize ARED protestors.



Within the context of ongoing Sinhalization, as well as the socio-economic issues in the Northern and Eastern provinces, the hardships felt by the families of the disappeared is often exac-

erbated. Often, those who were disappeared were also breadwinners of their families, which meant that in their absence, families underwent many financial hardships. Protestors note that in the wake of the economic crisis, attendance at protests has been diminishing since most cannot afford to miss a day's work in order to attend, nor can they afford to fund transport, food, or other expenses in the course of protesting.

There is also an overarching sense of loneliness and helplessness felt by the protestors. Protesting women experience social stigmas within their communities; those with missing spouses are often ostracized as they are perceived as "widows," and protesting women are generally criticized by their families and their villages for being individuals who draw too much attention from state authorities. While the hollow commissions and harassment from the state make it clear that state officials have abandoned the protestors, these social dynamics also make protestors feel abandoned by their own families and communities, worsening their feelings of isolation.

— “  
To search for  
one disappeared family member,  
I can't leave the rest of my family.  
WOMAN IN BATTICALOA ” —

— “  
I can't sacrifice my son who is with me  
now in order to continue searching for  
my other disappeared son.  
WOMAN IN TRINCOMALEE ” —

While protestors find community within themselves to seek emotional support, these networks can only go so far in adequately providing health and wellness support for protestors and their families. Protestors from every district spoke about their inability to continue protesting in the long run due to this lack of support, and inability to grow and sustain the protests beyond their current members. Several women noted that nobody other than themselves would be willing to take on the work of fighting for their missing loved ones. Some protestors noted that they entered ARED to continue the search that one of their deceased family members had started, but also expressed little hope in being able to pass on this work to the next generation within their communities. This worsens the feelings of isolation that are felt by protestors in their struggle.

— “  
It's okay if I die. I've suffered this much,  
I only want answers.  
WOMAN IN TRINCOMALEE ” —

It is clear that the protests, as they are now, cannot be sustained for a very long time. Since the beginning of these protests in 2017, over 200 protestors have passed away without any answers regarding their missing family members. This being an under-resourced movement, as well as the lack of succession in carrying this protest, is a source of worry and mental anguish for many.

## Recommendations

“

This should not happen to anyone else  
ever again.

WOMAN IN MANNAR

”

The ARED demands are clear in articulating the ultimate goals of their protest. Accountability in this context is a multifaceted issue, and working towards meaningful progress requires amplification and prioritization of victim voices. As such, any support or solutions brought forth for the families, and for the Tamil people, should be mindful of the following elements:

### *1. No Trust in Domestic Mechanisms*

“

Without an international solution,  
we will also become disappeared.

WOMAN IN TRINCOMALEE

”

Time and time again, the Sri Lankan state has inflicted violence against the Tamil people in the North and the East. It has also continually engaged in performative acts of transitional justice, without enacting meaningful change. The experiences of protestors that have been detailed above demonstrate that they experience ongoing harm and suffering due to the state's actions. When placing these acts within the context of the country's history of Sinhala-Buddhist supremacy, as well as ongoing infringements on Tamil lands and people through land grabs, heavy militarization, and discriminatory legislation, it becomes clear that the Sri Lankan state is not fit to deliver justice for its crimes. As such, any solutions or interventions on the issue of enforced disappearances cannot come from empowering or legitimizing any further domestic mechanisms in Sri Lanka. Any such efforts would go directly against the demands of the ARED protestors, and would continue to delay any meaningful form of justice or accountability.

### *2. Centering Victims*

As noted, this protest has taken a serious toll on victim communities. Despite the emotional, security, and financial constraints faced by protestors, they have continued in this advocacy for

over 2500 days continuously. These activists need to be granted platforms, organizing resources, and mental health and well-being support to sustain this movement. Agency must also be granted to victims to advocate for themselves as they see fit.

Importantly, international states, UN bodies, and other NGOs and INGOs should visit their sites of protest, and consult with ARED directly to understand their protests and the ongoing circumstances in their locales. The experiences of these protestors is underreported in mainstream media and advocacy spaces, and there is a lack of awareness regarding why these protests continue to be relevant. Through direct consultations and relationship-building, there can be a more clear understanding of what gaps exist in Sri Lanka as it pertains to state accountability for human rights violations.

### **3. Documentation**

The documentation of stories, collection of evidence, and creation of case files has continued to be an issue for protestors due to many factors. The age of most protestors, compounded with the trauma and violence they have suffered, have impacted their memories of events over the past decades, and many others have passed away before receiving any answers. Many have had difficulties preserving or recovering original documents due to the requirements of former commissions to submit these documents to them. Although there have been attempts at documentation, there is a widespread lack of clarity regarding who they spoke to, and where that information is now. In tandem, this puts many stories and cases at risk of being entirely lost in the near future.

— “  
This should not be  
an intergenerational protest.

WOMAN IN AMPARAI

” —

As such, resources are needed in order to coordinate a confidential, transparent, trauma-informed, and trustworthy program for the documentation of cases. This database of information and its use should be directed by the protestors themselves, allowing for periodic updates as they recall or receive any further information on their loved ones. Importantly, this information must be protected from the Sri Lankan state, which continues to use the information that they have on missing persons' cases in order to intimidate and harm their loved ones. Creating such a mechanism to systematically collect and preserve the data that protestors have compiled individually over the past few decades would allow for legal cases to be built, and for potential prosecutions in the future. In this way, accountability can be sought in cases even if the family members themselves are no longer here to advocate for their loved ones.



#### 4. *Justice and Accountability from International Community*

— “ —  
 We require the support and expertise  
 of any country that values  
 humanity and justice  
 WOMAN IN KILINOCHCHI — ” —

There is a lack of legal resources within the community to understand the exact manifestation of their demands in international law, and what recourse might exist in holding the Sri Lankan state accountable for these crimes. However, given the impossibility of a domestic mechanism, international avenues for justice must be pursued for victims of enforced disappearances. Various elements of a potential international solution were discussed, which should be taken into consideration when pursuing any form of international accountability.

International expertise is required to understand how to investigate crimes such as enforced disappearances, coordinate case-building, bring forward prosecutions, and particularly, work within victim communities without further burdening or traumatizing them. If any of these processes were to occur domestically, third-party neutral observations are required to assure that victims are being treated fairly, and to assure that due process is followed. Support is also required to understand legal options for protestors; although a referral to the ICC and universal

jurisdiction cases are options that are being explored in the community, there is a knowledge gap in understanding what mechanisms should be pursued at the moment.

International pressure on the Sri Lankan state was also noted as means to support the Tamil struggle broadly. Leveraging this pressure to urge the state to, for example, implement the recommendations of past commissions such as the CTF, halt their military operations across the North and East, or stop the Sinhalization of traditionally Tamil lands and cultural landmarks would have a marked impact on all Tamil people that are currently subjected to state violence. In countries around the world, Tamil diaspora advocacy along with the work happening on-the-ground in Sri Lanka has led to the release of statements and declarations that recognize Tamil genocide and the violence of the Sri Lankan state. In the past few years, sanctions and travel bans have also been issued by countries like Canada and the USA against people recognized to have violated human rights during the conflict. While these measures do not directly influence the circumstances of the protestors on-the-ground, they are impactful in increasing the pressure on the Sri Lankan and in standing in solidarity with the Tamil struggle on the island.

## Conclusion

The ARED families have been protesting with all their might to demand justice for their disappeared loved ones. Tamil families have repeatedly tried to engage with domestic mechanisms and institutions, and have only faced violence and disappointment at every turn. In addition to denying these families any truth regarding what has happened to their loved ones, the state continues to occupy Tamil lands, intimidate Tamil victims, and suppress any individuals or groups that speak up against this ongoing injustice. The makeup of the ARED protestors being mostly women also requires the consideration of the external social factors that will impact the longevity of these protests. Domestic mechanisms have always been, and will always be, insufficient in addressing the state's past wrongdoings, and an international solution is the only means of guaranteeing accountability and justice for crimes committed against Tamil people. At this time, it is essential for international actors to support this movement and amplify the demands of the protestors in order to influence any meaningful change within Sri Lanka.

