

මගේ අංකය  
எனது இல.  
My No.

ඔබේ අංකය  
உமது இல.  
Your No.



දිනය  
திகதி  
Date. } 14.05.2024

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**இலங்கை மனித உரிமைகள் ஆணைக்குழு**  
**Human Rights Commission of Sri Lanka**

The Hon. Attorney-General  
Attorney General's Department,  
Colombo 12.

Hon. Attorney-General,

**Alleged Enforced Disappearance of Mr Kapila Kumara De Silva**

The Human Rights Commission of Sri Lanka (HRCSL) wishes to bring to your immediate attention the possible enforced disappearance of one Mr. Gonapinuwala Kapila Kumara De Silva, a resident of Horowpathana, Anuradhapura.

Apart from its mandate under sections 10 and 11 of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, the HRCSL has a specific mandate under the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018. It is empowered to contribute towards the protection of all persons from enforced disappearance, including through visiting places where persons are deprived of liberty and conducting inquiries upon the request of the High Court.

At the outset, it is observed that the HRCSL will continue its inquiry and investigation to ascertain whether a violation of Mr. De Silva's fundamental rights has taken place. Without prejudice to that ongoing process, and in recognition of the possibility that a criminal offence may have taken place, the HRCSL invites you to consider the facts and allegations set out in this letter to determine whether a separate criminal investigation should be launched by Sri Lanka Police under the International Convention for the Protection of All Persons from Enforced Disappearance Act upon your advice. You will appreciate that the Act is relatively new, and the elements of the offence of 'enforced disappearance' are complex. Therefore, we anticipate that Sri Lanka Police would benefit from your advice as to whether an investigation into the possible commission of an offence under the Act is warranted.

**Chronology of Events**

A chronology of Mr. De Silva's alleged disappearance and re-emergence, and subsequent revelations with respect to his alleged secret detention, is presented below for your consideration.

1. Mr. De Silva was reported missing on or about **27 March 2024**. Thereafter, on **1 April 2024**, Mr. De Silva's mother filed a complaint with the HRCSL, which began investigations under and in terms of the HRCSL Act.

2. The complainant alleged that Mr. De Silva was taken into custody by officers of the Special Task Force (STF) of Sri Lanka Police. Her allegation was based on the fact that several officers of the STF had previously visited Mr. De Silva's residence on **29 March 2024** inquiring about the whereabouts of Mr. De Silva.
3. On **28 March 2024**, Ms. Nadeeka Somarathne, spouse of Mr. De Silva, lodged a complaint at Horowpathana Police Station (under reference number CIB 1 395/43) claiming that Mr de Silva had gone missing.
4. On **9 April 2024**, the HRCSL sought a report from the STF on whether Mr. De Silva was in the custody of the STF. On **12 April 2024**, the Commandant of the STF sent a written report to the HRCSL. The report stated that Mr. De Silva was a suspect in a shooting incident and was wanted by the STF. However, the report stated that Mr. De Silva was evading arrest at the time and was not in the STF's custody. The HRCSL thereafter continued investigations into the whereabouts of Mr. De Silva.
5. On or about **22 April 2024**, the HRCSL was reliably informed that Mr. De Silva had been in the custody of the Pitigala Police Station and had been produced before the Elpitiya Magistrate's Court on **21 April 2024**. It was thereafter confirmed that the Elpitiya Magistrate's Court had ordered that Mr. De Silva be placed in remand custody in the Galle Prison.
6. On **24 April 2024**, the HRCSL visited Mr. De Silva at the Galle Prison and recorded his statement.
7. In his statement, Mr. De Silva alleged that, on **26 March 2024**, he was abducted by several persons dressed in civilian clothing and that he was transported in a vehicle that he described as a 'white van' to a secret location. He alleged that the persons who took him into custody claimed that they were 'police officers'. Mr. De Silva alleged that, while in the vehicle, the said persons removed his t-shirt and used it to blindfold him. He alleged that he remained blindfolded throughout the period of his confinement.
8. Mr. De Silva alleged that the persons who took him into custody transferred him to another vehicle and then transported him to a location that appeared to be secluded. He alleged that the persons who took him into custody interrogated him for several days in relation to a shooting incident. He alleged that his interrogators assaulted him and that, on one occasion, informed him that he would be executed. He claimed that he had informed the interrogators that he was not involved in the said incident.
9. Mr. De Silva alleged that, following an extended period of interrogation, he was informed by the interrogators that they had concluded that he was not in fact the suspect they were looking for, and that he would be handed over to 'police custody'. He also alleged that these persons ordered him not to hold any press conferences in relation to the incident.
10. Mr. De Silva stated that he was then transported and handed over to certain other persons who removed his blindfold. He alleged that, on the same day, which turned out to be **20 April 2024**, these other persons handed him over to the Pitigala Police Station. Mr. De Silva claimed that he was examined at the Elpitiya Hospital and was then produced before the Elpitiya Magistrate's Court. However, he claimed that, at the time, he had not reported his abduction and assault due to a fear that he would face reprisals.



11. Upon conducting further investigations into how Mr. De Silva came to be placed in the custody of the Pitigala Police Station, the HRCSL was, on **22 April 2024**, informed by the Officer in Charge of the Pitigala Police Station that Mr. De Silva was handed over to the said Police Station by an officer of the STF. Moreover, the HRCSL observes that the information book of the Pitigala Police Station records the fact that the STF had handed Mr. De Silva over to the said Police Station on **20 April 2024**.

### **Recommended Measures**

The HRCSL recalls that, in terms of section 3(1) of the International Convention for the Protection of All Persons from Enforced Disappearance Act, the offence of 'enforced disappearance' has three elements:

- a. First, the offence of 'enforced disappearance' may be committed only by a person who is a public officer or is acting in an official capacity, or a person acting with the authorisation, support or acquiescence of the state.
- b. Second, there must be an arrest, detention, wrongful confinement, abduction, kidnapping, or any other form of deprivation of a person's liberty.
- c. Third, there must be a refusal to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty; or a concealment of the fate of the relevant person; or a failure or refusal to disclose or an inability without valid excuse to disclose the subsequent or present whereabouts of the relevant person.

Moreover, section 15(1) of the International Convention for the Protection of All Persons from Enforced Disappearance Act provides that 'no person shall be held in secret detention'.

In light of the aforesaid provisions, the HRCSL is of the view that there are reasonable grounds to believe that the key elements of the offence of 'enforced disappearance' may have been satisfied in Mr. De Silva's case. First, the said person was allegedly arrested and/or detained and/or abducted and/or deprived of his liberty on or about 24 March 2024 by persons who appear to have been public officers or acting in some official capacity. Second, no public officer acknowledged taking Mr. De Silva into custody nor did any such officer disclose the whereabouts of Mr. De Silva during the period between 26 March and 20 April 2024. Moreover, during the period between 26 March and 20 April 2024, Mr. De Silva appears to have been placed in secret detention in an undisclosed location.

In this context, it is imperative that an independent and impartial criminal investigation be launched into Mr. De Silva's alleged disappearance to ascertain whether a punishable offence has been committed under the International Convention for the Protection of All Persons from Enforced Disappearance Act. The HRCSL accordingly urges you to consider providing the requisite advice to Sri Lanka Police to initiate such a criminal investigation into the possible enforced disappearance of Mr de Silva. We also urge you to consider, if applicable, the initiation of proceedings before the High Court under and in terms of the Act. We reiterate that the HRCSL has a mandate under section 20(3) of the Act to assist the High Court by inquiring into and reporting on any enforced disappearance on the request of the Court.

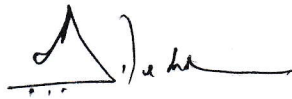
The HRCSL recalls that, under section 14(3) of the International Convention for the Protection of All Persons from Enforced Disappearance Act, '**where there are reasonable grounds for believing that a person has been subjected to an offence under section 3, law enforcement**

**authorities shall undertake an investigation, even if there has been no formal complaint'**  
(emphasis added).

In conclusion, we wish to emphasise that the phenomenon of enforced disappearance has deeply scarred all communities in Sri Lanka. It is a phenomenon that became commonplace in this country, particularly in the South during the late 1980s, and in the North and East during and in the immediate aftermath of the armed conflict. Holding perpetrators of enforced disappearances accountable remains crucial to ensuring the non-recurrence of this phenomenon. We also recall that the Lessons Learnt and Reconciliation Commission recommended the credible investigation of widespread allegations of enforced disappearances. It is in this overarching context that we urge your immediate intervention in this matter.

We thank you for your Department's continued cooperation and engagement.

Sincerely,



Justice L.T.B. Dehideniya,  
Chairman.

Justice L.T.B. Dehideniya  
Judge of the Supreme Court (Retired)  
Chairman  
Human Rights Commission of Sri Lanka

Human Rights Commission of Sri Lanka.

Cc: Mr. Deshabandu Tennakoon,  
Inspector General of Police,  
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