

CRIMINALISING ENFORCED DISAPPEARANCES IN SRI LANKA: A FRAMEWORK FOR THE PATH FORWARD

*Samindika Elkaduwe**

ABSTRACT

The main objective of the paper is to make recommendations as to the best possible alternative to be adopted in criminalizing the conduct that constitutes enforced disappearances in Sri Lanka. To that end the paper attempts to engage in a critical appraisal of the three dominant approaches adopted by comparative jurisdictions and international tribunals towards the issue of criminalizing enforced disappearances in order to develop a conceptual basis for recognizing an autonomous crime of enforced disappearances for Sri Lanka.

Section 2 of the paper examines the nature and the characteristics of the conduct that constitutes enforced disappearances. Section 3 engages in a comparative analysis of the three dominant approaches adopted by the States and international tribunals in criminalising enforced disappearances. Section 4 of the paper examines the types and causes of enforced disappearances in Sri Lanka and the efforts made by successive governments to address the issue. The final segment of the paper, that is section 5 seeks to make a case for the recognition of an autonomous crime of enforced disappearances in Sri Lanka along with recommendations for the elements of the crime that encapsulate the unique nature of the enforced disappearances in Sri Lanka in light of the conceptual framework laid down in the first two parts of the paper.

* LLM in International and Comparative Law, Thomas Buergenthal Scholar, George Washington University Law School, USA; LLM, LLB (Honours) Faculty of Law, University of Colombo, Sri Lanka; Lecturer in Law, Faculty of Law, General Sir John Kotelawala Defence University, Sri Lanka. Author wishes to extend her sincere gratitude to Professor Laura A. Dickinson, Oswald Symister Colclough Research Professor of Law at the George Washington University Law School for her invaluable guidance and insights in writing this paper. Author also wishes to extend her special thanks to Dr. Thusitha Abeysekera for his extremely useful feedback and the editors of the Sri Lanka Journal of International Law for their support and patience.