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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Enforced and Involuntary Disappearances in Sri Lanka

Sri Lanka has the second highest records related to disappearances. For decades, enforced disappearances have been employed in a massive and systematic way as a tool to suppress political dissent, fight against “terrorism” or in the context of the internal war¹. Different turbulent moments in the history have been marked by disappearances: the Janatha Vimukthi Peramuna (JVP) uprising of 1971 and its insurgency in late 80’s; the communal riots of 1983; the signing of the Indo-Sri Lanka Peace Accord; and the presidential and parliamentary elections of 1989 and 1990, followed by the breakdown of the peace talks between the Government and the Liberation Tigers of Tamil Eelam (LTTE) in June 1990². Disappearances were widespread during the final stages of the war. A great number of people disappeared, some by the LTTE, others by security forces, para-military groups or later when crossing over to the government controlled areas³. However, disappearances did not come to an end with the end of war. A considerable amount of disappearances have been reported since 2009, in what had become a common tool in post war Sri Lanka⁴. Some recent cases concerning the so-called “white van” abductions confirm the persistence of the phenomenon of abductions⁵.

According to declarations made by the chairperson of the Office for National Unity and Reconciliation, over 65,000 missing persons’ cases had been received since 1994⁶. The International Committee of the Red Cross (ICRC) claims to have received over 16,000 tracing requests since 1990, including approximately 5,200 from the families of missing military and police personnel, while the recently-terminated Presidential Commission to Investigate into Complaints regarding Missing Persons (*Paranagama Commission*) said to have received more than 24,000 complaints⁷.

As of August 2016, no one has been held accountable for enforced disappearances, which reflects the well-established culture of impunity among the State and non-state actors⁸. It is essential for the new Government of Sri Lanka (GoSL) to adopt victim-centered measures to restore their human rights, as a first step to deal with its past in order to lay the ground for a true reconciliation process.

There have been several encouraging steps taken by the GoSL for the last few months: the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICED) on 25th May; the adoption of the policy on the issuance of certificates of absence; and the passing of the Office of Missing Persons (OMP) bill on 11th August, charged with the task of addressing the issue through searching and tracing of missing persons⁹.

¹ *Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka*. 18 November 2015. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16771&LangID=E>

² *Enforced and involuntary disappearance in Sri Lanka*, A/HRC/19/NGO/123, International Movement Against All Forms of Discrimination and Racism (IMADR). 28 February 2012. http://imadr.org/wordpress/wp-content/uploads/2013/12/Written-Statement_HRC-19th_session_Enforced-Disappearance-in-Sri-Lanka-2012.pdf

³ Ibid

⁴ The 2012 article claimed that in post war Sri Lanka, there was disappearance every 5 days. <http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/>

⁵ *Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka*. 18 November 2015

⁶ Sri Lanka admits 65,000 missing from war, insurrection. Reuters. June 8 2016. <http://in.reuters.com/article/sri-lanka-rights-idINKCN0YU277>

⁷ “*The Paranagama Commission has done great damage. Now that damage must be repaired*”, Sri Lanka Campaign. 6 July 2016. <https://www.srilankacampaign.org/paranagama-commission-done-great-damage-now-damage-must-be-repaired/>

⁸ *Enforced Disappearance in Sri Lanka. (2006-2013). Rights of the families of the disappeared*. Watchdog, 'Groundviews.org,' Colombo, January 9, 2014

⁹ ‘*Certificate of Absence*’ for 65,000 disappeared people in Sri Lanka. Ceylon News. June 08, 2016. <http://www.ceylonews.com/2016/06/certificate-of-absence-for-65000-disappeared-people-in-sri-lankan/> and

Challenges and concerns

Despite these achievements, a number of challenges lie ahead. The ratification of the ICED is not sufficient if it is not reflected in adequate legal and institutional frameworks at the national level. There is no reference in the Constitution to guarantee the State to investigate the acts of enforced disappearances¹⁰. Enforced disappearances are not criminalized in the national law. It is imperative to eliminate all legal provisions that can be used for enforced disappearances. Therefore, the immediate repeal of the Prevention of Terrorism Act (PTA) and the replacement by legislation in conformity with international human rights standards is essential, since the current law contains several provisions that trigger enforced disappearances¹¹.

A number of concerns must be expressed in regard to the OMP. Echoing the observations of the UN Working Group on Enforced or Involuntary Disappearances (WGEID)¹², the lack of public consultations with and participation of those directly affected prior to the establishment of the Office is troubling. Trust from the families of the disappeared needs to be gained through their sufficient involvement with the OMP. The terminology used in the OMP bill leaves concerns. The term “tracing” is troubling, as it does not reflect the fact that a crime has been perpetrated. Acts of enforced and involuntary disappearance must be investigated, not just traced, in order to prosecute those responsible.

Clause 13 (2) of the OMP bill, which states that the findings from investigations done by the Office will not give rise to criminal or civil liability, raises concern. Even though the same bill mentions a possible reference of cases, which implicate the conduct of crime, to the relevant law enforcement or prosecution authorities¹³, no specific criminal mechanism has been created for the cases of disappearances. Therefore, it is unclear how the criminal responsibilities for enforced and involuntary disappearances will be handled. The GoSL must comply with its obligations under the ICED to investigate acts of enforced disappearance and bring those responsible to justice. As the WGEID observed, the impunity for enforced disappearances leads to further human rights violations¹⁴.

Regarding international involvement, clause 11 of the bill vests the OMP with powers to “*enter into [...] agreements with any person or organization [...] whether domestic or foreign, including agreements securing assistance in obtaining information; obtain technical support and training (forensic or otherwise) and collaboration; establishing databased and personal data protection [...]*”¹⁵. Without international involvement in the OMP, it will be difficult for the families of the victims to place faith in the institution due to the history of failed domestic mechanisms.

Victims, relatives, witnesses, human rights defenders and civil society groups must be free from fear and threats. The repetitive reports sent to the WGEID on the refusal of the families of the disappeared and civil society groups to testify due to fear and harassments¹⁶ represent a need for a safe environment. It must be pointed out that the Assistance to and Protection of Victims of Crimes and Witnesses Act needs to be strengthened. The Government must incorporate better safeguards in order to assure the independence and effectiveness of witness protection. The Government should also set guarantees that ensure the independence of members of the Witness Protection Authority.

Regarding the new policy in relation to the issuance of certificates of absence, such certificate must become available in an expeditious manner in order to address the suffering and distress of the families of the disappeared who did not apply

‘Certificates of Absence’ for the war missing. The Hindu. 8 June 2016, <http://www.thehindu.com/news/international/certificates-of-absence-for-the-warmissing/article8701722.ece>

¹⁰ *Report on Public Representations on Constitutional Reform.* Public Representations Committee on Constitutional Reform. May 2016

¹¹ In particular the provision which allows detention without judicial supervision.

¹² *Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka.* 18 November 2015

¹³ Clause 12(i). Office on Missing Persons (establishment, administration and discharge of functions) Bill. May 27 2016.

¹⁴ *Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka.* 18 November 2015.

¹⁵ Part II. Clause 11(a). Office of Missing Persons (establishment, administration and discharge of functions) Bill.

¹⁶ *Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka.* 18 November 2015

for a death certificate. Currently, those families face a range of practical issues including inability or difficulty in facilitating property transfer and ownership, applying for compensation, qualifying for social welfare payments and pensions as well as accessing frozen assets¹⁷.

Finally, all victims of enforced disappearances and their relatives have the right to full reparations, which includes compensation, restitution, rehabilitation and psychosocial support¹⁸. Especially, special needs of female family members of the disappeared must be addressed as recently documented by the ICRC¹⁹.

Recommendations

The Government of Sri Lanka should:

- Repeal the PTA to prevent enforced disappearances and replace it with legislation in compliance with international human rights standards;
- Criminalize the act of enforced disappearance in the national law;
- Ensure the full involvement of the families of the disappeared in the setting up and operation of the OMP;
- Allow international participation in the OMP;
- Conduct criminal investigations to prosecute those responsible for enforced disappearances;
- Provide a safe environment for anyone who wish to testify before or cooperate with the OMP;
- Swiftly implement the policy on the issuance of certificates of absence;
- Guarantee the access to full reparation for victims and their families including compensation, restitution, rehabilitation and psychosocial support; and
- Establish OMP units in the North and East to facilitate closer interactions with the victims and witnesses for effective participation.

¹⁷ *Certificates of Absence: A Practical Step to Address Challenges Faced by the Families of the Disappeared in Sri Lanka*. The Centre for Policy Alternatives (CPA). September 2015.

¹⁸ Ibid

¹⁹ *Living with Uncertainty: Needs of the Families of Missing Persons in Sri Lanka*, International Committee of the Red Cross. July 2016. <https://www.icrc.org/en/document/sri-lanka-families-missing-persons>