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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.

[04 September 2017]

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

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## Enforced Disappearances in Sri Lanka

Sri Lanka has endured consecutive periods of violent insurgency and a 26-year-long armed conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam.<sup>1</sup> This conflict ended in 2009 and was characterised by the killing of civilians, arbitrary arrests and detention of Tamils, widespread torture, extrajudicial executions, and enforced disappearances.<sup>2,3</sup> It has had “devastating consequences at a human, social and institutional level”.<sup>4</sup> According to the OHCHR Investigation on Sri Lanka (OISL) Report, many of the violations committed between 2002-2011 would be classed as war crimes and crimes against humanity if established in a court of law.<sup>5</sup>

Sri Lanka transitioned to a coalition government in January 2015, purportedly bringing a new willingness to engage. In 2015 the Government co-sponsored the Human Rights Council (HRC) Resolution 30/1, detailing a framework for reconciliation, accountability and human rights. Despite their purported willingness to follow through, progress seems to have stalled.<sup>6</sup> An update on the implementation of Resolution 30/1 was reviewed in the 34<sup>th</sup> HRC session in March 2017 where the deadline was extended for another two years.

Enforced disappearances have been used to subdue political dissent and counter terrorist activities, both during and after the armed conflict.<sup>7</sup> The Special Rapporteur on torture has received credible information that the strategy has continued to be used.<sup>8</sup> In 2016 at least ten cases were reported between March 30<sup>th</sup> and June 30<sup>th</sup>.<sup>9</sup> Recent disappearances are usually attributed to antiterrorism operations, ransom, or economic extortion.<sup>10</sup> The most recent Commission of Inquiry received around 21,000 complaints and the Government stated that they have received over 65,000 since 1994.<sup>11</sup>

The Special Rapporteur on torture notes that most of the structures of a warring nation remain in place with citizens living without even minimal guarantees against the power of the State.<sup>12</sup> Before 2015 relatives, witnesses, and civil society were often intimidated, threatened and subject to reprisals for insisting on proper investigations. Sometimes families were forced into exile abroad.<sup>13</sup> No progress has been made on the vast majority of cases.<sup>14</sup> Since 2015 the

1 *Sri Lanka: Making the Rights Choices*. Amnesty International. 8 Nov 2016. <https://www.amnesty.org/en/documents/asa37/4902/2016/en/>

2 *Preliminary Observations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the conclusion of its visit to Sri Lanka*. 14 Jul 2017. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>

3 *Sri Lanka: Making the Rights Choices*.

4 *Joint Alternative Report from the Sri Lanka NGO Collective to the Committee Against Torture*. 13 Oct 2016.

5 *Broken Promise: an overview of progress by the government of Sri Lanka in implementing its commitments to achieving justice and reconciliation under the UN Human Rights Council Resolution 30/1*. Sri Lanka Campaign. February 2017. <https://www.srilankacampaign.org/take-action/keep-the-promise/>

6 *Preliminary Observations of the Special Rapporteur on countering terrorism*. 14 July 2017. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>

7 *Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka*. 8 July 2016. A/HRC/33/51/Add.2 (hereafter *Report of the WGEID on its mission to Sri Lanka*)

8 *Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment on the Official joint visit to Sri Lanka*. 7 May 2016. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943>

9 *Human Rights Situation in Sri Lanka Aug 17, 2016 – Aug 17, 2016*. 2016. Inform - Human Rights Documentation Centre. <https://ihrdc.files.wordpress.com/2016/12/human-rights-in-sl-one-year-after-parliamentary-elections-inform-18aug20161.pdf>

10 *Report of the WGEID on its mission to Sri Lanka*.

11 *News Line TV 1 Interview with Bhavani Fonseka*. 28 July 2017. <https://www.youtube.com/watch?v=Qxlw5lCFnHw&app=desktop>; *Sri Lanka: Making the Rights Choices*.

12 *Preliminary observations and recommendations of the Special Rapporteur on torture*.

13 *Report of the WGEID on its mission to Sri Lanka*; *Sri Lanka: Making the Rights Choices*.

14 *Broken Promise*.

democratic space has opened up considerably and although intimidations and harassment still occur they transpire much less frequently. Impunity for violations is still a core concern, as 22 key commitments promised by Resolution 30/1 remain unimplemented.<sup>15</sup>

We welcome Sri Lanka's engagement with UN human rights mechanisms and the standing invitation to the special procedures. The Government ratified the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) in May 2016 and recognised the competence of the Committee Against Torture to consider individual communications.<sup>16</sup> We also note that the President gazetted the Office on Missing Persons (OMP) in July 2017, the "first independent and permanent mechanism to address missing persons and the issue of enforced disappearances".<sup>17</sup>

### Challenges and Concerns

In 34<sup>th</sup> Session of the HRC, the High Commissioner drew attention to the "slow rate of progress and the lack of transparency" in realizing Resolution 30/1.<sup>18</sup> Although Sri Lanka ratified the ICPPED, no domestic legislation exists to enforce it.<sup>19</sup> National law offences have insufficient scope to encompass enforced disappearances or the penalty is too lenient for the gravity of the crime.<sup>20</sup> Additionally, Sri Lanka has failed to recognize the competence of the Committee on Enforced Disappearances to receive and consider individual communications.

The international community commended the report by the government-appointed Consultation Task Force on Reconciliation Mechanisms (CTF), which undertook wide consultations throughout the country and provided detailed recommendations.<sup>21</sup> The Government, however, failed to welcome the report. Neither the President nor the Prime Minister attended its handover and its findings have been casually disregarded.<sup>22</sup> In a statement to the HRC in February 2017, the former Foreign Minister stated that he expected to see draft legislation on the truth-seeking commission within two months.<sup>23</sup> No public statement has mentioned it since.<sup>24</sup>

Families may be able to use the recently enacted Right to Information Act (RTI) to discover the fate of their loved ones. However, a leading lawyer believes that the legislation is unlikely to answer questions concerning the civil war, as it is silent on this kind of request. Several women from Batticaloa attempted to use the RTI for this purpose and filed a request regarding the whereabouts of disappeared friends and family members but were "met with a mixture of apathy and confusion" and even had to educate some officials on the Act.<sup>25</sup> Information relating to the war may be denied on the basis of national security but the Centre for Policy Alternatives urge people to nonetheless continue seeking the truth through these means.<sup>26</sup>

<sup>15</sup> Sri Lanka: *Making the Rights Choices; Broken Promise*.

<sup>16</sup> Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka. 10 Feb 2017. A/HRC/34/20

<sup>17</sup> News Line TV 1 Interview with Bhavani Fonseka.

<sup>18</sup> Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka.

<sup>19</sup> The Bill to enforce this Convention was gazetted in February 2017 but subsequently tabled by Parliament. *Basic Guide to the International Convention for the Protection of All Persons from Enforced Disappearance*. Centre for Policy Alternatives. 27 Jun 2017. <http://www.cpalanka.org/basic-guide-to-the-international-convention-for-the-protection-of-all-persons-from-enforced-disappearance/>

<sup>20</sup> Report of the WGEID on its mission to Sri Lanka.

<sup>21</sup> Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka.

<sup>22</sup> Sri Lanka: *Consultation Task Force report must lead to justice*. Amnesty International. 11 Jan 2017. <https://www.amnesty.org/en/latest/news/2017/01/sri-lanka-consultation-task-force-report-must-lead-to-justice/>

<sup>23</sup> *Draft of Sri Lanka truth seeking commission within 2 months*. Lanka Business Online. 28 Feb 2017. <http://www.lankabusinessonline.com/draft-of-sri-lanka-truth-seeking-commission-within-2-months-fm-to-unhrc/>

<sup>24</sup> Sri Lanka: *Consultations Lacking on Missing Persons' Office*. Human Rights Watch. 27 May 2016. <https://www.hrw.org/news/2016/05/27/sri-lanka-consultations-lacking-missing-persons-office>

<sup>25</sup> *Launching Right to Information in Sri Lanka*. Your Commonwealth. 23 Feb 2017. <http://www.yourcommonwealth.org/social-development/democracy-participation/launching-right-to-information-in-sri-lanka/>

<sup>26</sup> Sri Lankan lawmakers approve freedom of information law. Mail Online. 24 Jun 2016.

At the time of writing, the Prevention of Terrorism Act (PTA) is still in force. A third draft of the Counter Terrorism Act (CTA), legislation meant to replace the PTA, was approved in May 2017.<sup>27</sup> A number of concerns have been raised about the CTA regarding prolonged detention without charge, the definition of terrorism, and procedural safeguards.<sup>28</sup> The Special Rapporteur on counter-terrorism and human rights conducted a country visit to Sri Lanka in July 2017 and overall was discouraged by the lack of progress. The glacial pace of the CTA has delayed the delivery of transitional justice measures that were promised two years ago.<sup>29</sup> The Prime Minister assured the Special Rapporteur that upon completion of counter-terrorism reform the government would create a Truth and Reconciliation Commission and an Office of the Special Prosecutor, steps that should have been completed by now.<sup>30</sup>

President Sirisena signed the gazette on the OMP in July 2017 and assigned the office to the Minister of National Integration and Reconciliation where it will essentially be under his control as the Cabinet Minister of Reconciliation.<sup>31</sup> It must be noted that this is only the first step in operationalizing this office; a minister must also issue a gazette and call for nominees.<sup>32</sup> The OMP received significant criticism from civil society and the international community for failing to involve substantive consultation. The OMP Bill facilitates international involvement; however there has been an on-going resistance to any foreign involvement in the mechanisms themselves.<sup>33</sup> Worryingly the legislation specifically states that the findings will not give rise to criminal or civil liability.

Memorialisation is key to the reconciliation process and all communities have the right to construct memorials, regardless of their allegiance. Therefore, families must be allowed to participate in memorialisation activities and the State must guarantee their security. However, Reverend Fr. Elil Rajendran complained to the Human Rights Commission stating that police have summoned him multiple times to be interrogated about his memorialisation activity. Such repudiation of these rights will deepen ethnic divisions and hamper reconciliation efforts.<sup>34</sup>

The Government also committed to establishing an office for reparations.<sup>35</sup> The former Foreign Minister stated that the Government was finalizing the design for such an office, but no reparations policy has been established or appears to be in the process.<sup>36</sup> As Sri Lanka did not recognise the status of ‘missing’, families of missing persons were unable to apply for compensation, qualify for social welfare payments and pensions, access frozen assets or transfer property ownership. Upon presentation of a Certificate of Death, relatives of the disappeared can receive compensation of up to

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<http://www.dailymail.co.uk/wires/ap/article-3658012/Sri-Lanka-close-approving-freedom-information-law.html>

27 No Parliamentary vote has yet been set on the CTA. *Note to Cabinet Policy and Legal Framework relating to the Proposed Counter Terrorism Act of Sri Lanka*. 24 Apr 2017. [http://www.sundaytimes.lk/170430/Policy\\_Legal\\_Framework.pdf](http://www.sundaytimes.lk/170430/Policy_Legal_Framework.pdf)

28 The definition of terrorism is also likely to lead to abuse due to its ambiguity and may even include acts of peaceful activity or protest, as it criminalises any activities that threaten the “unity” of Sri Lanka. *Sri Lanka: Anti-Terror Bill Revives Concerns of Abuse*. Human Rights Watch. 18 May 2017. <https://www.hrw.org/news/2017/05/18/sri-lanka-anti-terror-bill-revives-concerns-abuse>  
*Sri Lanka’s draft Counter Terrorism Act*. Sri Lanka Campaign. 4 May 2017. <https://www.srilankacampaign.org/sri-lankas-draft-counter-terrorism-act-license-continued-state-oppression-intimidation-torture/>

29 The government will engage with the Special Rapporteur to improve the draft legislation before it is placed before parliament.

30 *Preliminary Observations of the Special Rapporteur on countering terrorism*. 14 July 2017.

31 *Sri Lanka: Establish Office on Missing Persons immediately*. Amnesty International. 23 Jun 2017. <https://www.amnesty.org/en/latest/news/2017/06/sri-lanka-establish-office-on-missing-persons-immediately/>

32 *News Line TV 1 Interview with Bhavani Fonseka*.

33 *Key Elements for a follow-up resolution on Sri Lanka*. Human Rights Watch. 24 Feb 2017. <https://www.hrw.org/news/2017/02/24/key-elements-follow-resolution-sri-lanka>

34 *Letter to President Sirisena from the Human Rights Commission of Sri Lanka*. 7 Jun 2017. <http://hrcls.lk/english/wp-content/uploads/2017/06/Letter-to-H.E.-President-Memorialization-and-Reconciliation-E.pdf>

35 Including the All Island Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons of 1998 and the Lessons Learnt Reconciliation Commission. *The Need for a Comprehensive Reparations Policy and Package*. Centre for Policy Alternatives. April 2015. <https://www.cpalanka.org/wp-content/uploads/2015/04/The-Need-for-a-Comprehensive-Reparations-Policy-and-Package2.pdf>

36 *Broken Promise*.

100,000 rupees.<sup>37</sup> Relatives of the disappeared who allegedly had connections to terrorist organisations cannot claim this compensation. It must be noted that families are often under duress to accept these death certificate, which de facto ends the search for truth and justice.

In June 2016 an amendment to the Registration of Deaths (Temporary Provisions) Act<sup>38</sup> enabled the Government to issue a certificates of absence (COA). The COA is valid for two years or if information surfaces about the missing person. If, after two years, no information has been found relatives may extend the COA, apply for a Certificate of Death or cancel the COA. This may give rise to abuse, as families have often been pressured to accept a death certificate.<sup>39</sup> The former Minister of Foreign Affairs referenced these certificates in a speech made to the HRC but it is unclear whether this process is being utilised, or is even functioning.<sup>40</sup>

### **Recommendations to the Government of Sri Lanka**

- Implement the International Convention for the Protection of All Persons from Enforced Disappearance into national law.
- Ensure the full investigation of enforced disappearances regardless of victims' ethnicity, religion, or other status.
- Fulfil the promises laid out in Resolution 30/1.
- Investigate the cases of attacks, threats, intimidation, and harassment of journalists, human rights defenders, and families of the disappeared.
- Ensure that the Right to Information Act can be used to facilitate the discovery of the fate the disappeared.
- Acknowledge and adopt the recommendations made by the Consultation Task Force.
- Repeal the Prevention of Terrorism Act and ensure the replacement legislation complies with international standards.
- Operationalize and ensure the independence of the Office of Missing Persons, providing it with sufficient funding and resources to fulfil its mandate.
- Allow for the memorialisation of those killed in the war, regardless of their allegiance.
- Devise a transitional justice process by which the country will address the reformation of the justice system and the security sector, establish an independent truth seeking mechanism and design a comprehensive reparations scheme.
- Adopt the Rome Statue of the International Criminal Court, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Protocols additional to the Geneva Conventions of 12 August 1949.

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<sup>37</sup> Relatives of civil servants who are deceased receive up to 200,000 rupees. This provision is included in legislation dating back to 1988 and the amounts have not been updated since 2009.

<sup>38</sup> No. 19 of 2010

<sup>39</sup> Per Clause 13(1)(a)(i) of the OMP Bill. An interim report from the OMP can enable the Registrar General to issue a COA. If the investigation finds that the interim report was erroneous then the relatives and the Registrar General will be notified. It remains to be seen how this will work in practice.

<sup>40</sup> *Broken Promise*.