

THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM

IMADR Oral Statement: 27th session of the Human Rights Council

Item 3: Interactive Dialogues with the Working Group on Arbitrary Detention

10 September 2014

Thank you Mr. President,

IMADR expresses its appreciation for the detailed report presented by the Working Group. We fully endorse your recommendations which affirm the need to obtain the access to a lawyer of her or his choice, effective legal assistance and representation as well as that all detainees should benefit from all minimum procedural guarantees. In this regard, we would like to draw the Council's attention to the situations in Australia and Sri Lanka. Both States are signatory to the International Covenant on Civil and Political Rights (ICCPR), in which they have a binding obligation under its article 9 (1) not to subject anyone to arbitrary detention.

Australia has engaged in the arbitrary detention of asylum seekers, which is highlighted by the recent detention of 157 Sri Lankan Tamil asylum seekers, including 50 children. They had been held at sea about a month without access to qualified interpreters in windowless rooms. Many asylum seekers in detention are not held based on individual assessments, but based on their way of arrival. This has often led to a prolonged and indefinite detention in poor conditions. Children detained for long periods of time are at high risk of serious mental harm, which may amount to cruel, inhumane or degrading treatment.

According to UNHCR, as of 12th August 2014, 157 asylum seekers (84 Pakistanis, 71 Afghans and 2 Iranians) were arbitrarily detained in Sri Lanka. Recently, a Pakistani mother, who is four months pregnant, was detained with her family. She was taken ill seriously while in detention then admitted to hospital. She is at risk of deportation or separation from the family as the authorities are threatening to deport the husband and her three years old daughter. Like her, many victims and their families have not been informed reasons and laws applied for their arrests. Furthermore, no arrest warrant has been provided, and they have not been presented before a competent court. They have been denied access to a lawyer and kept in the detention centre in Boosa, Galle, which is run by the Terrorist Investigation Department (TID). It indicates that those arrested are detained under the Prevention of Terrorism Act (PTA). The Government of Sri Lanka is in clear violation of the provisions of the Convention Against Torture and the principle of non-refoulement. The authorities also continue to disregard the pending fundamental rights cases filed to the Supreme Court against arbitrary detentions.

Even after the conclusion of the conflict, the Government of Sri Lanka continues to use the PTA to detain persons for prolonged periods of time without a formal charge, especially in the Northern and Eastern provinces. The issues relating to detention remain unsolved including the failure to provide a list of detainees and detention centres as well as the lack of basic legal safeguards. The Government asserts that next of kin are provided information regarding detained family members. However, many family members who contact the TID or the Criminal Investigation Department (CID) are simply told that no such person is in detention.

We call on the both Governments to immediately halt all arbitrary detentions of asylum seekers, and adopt policies and practices that provide adequate protection and support in line with the international legal obligations, including necessary assistances from UNHCR. In the interim, we demand the Government of Sri Lanka to ensure the rights for due process of all those in detention, particularly the access to a lawyer.

We also support the Working Group's initiatives:

- (a) To continue to pursue its efforts to contribute to the follow-up of the joint study on secret detention (A/HRC/13/42); and
- (b) To address the follow-up to its own previous reports and opinions on detention and anti-terrorism measures, including the length of detention of individuals subject to indeterminate detention regimes.

Thank you Mr. President.