

**Submission to the 14th UPR Working Group**  
**Review of Sri Lanka**

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*Submitted by*<sup>1</sup>



**International Movement Against All Forms of  
Discrimination and Racism (IMADR)**

(In special consultative status with UN ECOSOC)

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<sup>1</sup> Following four civil society organizations in Sri Lanka (without UN ECOSOC consultative status), Committee for Investigation of Disappearance, Rights Now Collective, Peoples Commission for Human Rights, and Rights to Life, are partners in this submission.

**I. Comments to the response of the government of Sri Lanka (GOSL) to the recommendation made in the 1<sup>st</sup> cycle of the UPR contained in A/HRC/8/46/Add.1, paras. 12 – 15**

A/HRC/8/46/Add.1, para 12:

*“Sri Lanka refutes the allegation implicitly contained in the recommendation that there exists in Sri Lanka such a pattern of disappearances”*

1. The number of disappearance annually reported by the UN Working Group on Enforced or Involuntary Disappearance (WGEID) clearly shows the significance and continuation of the issue in the country. According to the recent report of the UN WGEID (A/HRC/19/58), 5671 cases of disappearance still remain outstanding in Sri Lanka; between 13 November 2010 and 11 November 2011, 59 cases were transmitted to the GOSL, no reply was given, no case was clarified. Moreover, GOSL has not responded at all to the general allegation, prompt intervention letter, and request for a visit given by WGEID.

A/HRC/8/46/Add.1, para 13:

*“The substantive criminal law prohibits enforced disappearances and carries penal sanctions. All complaints are fully investigated into and where evidence exists, perpetrators prosecuted”*

A/HRC/8/46/Add.1, para 14:

*“Some of the findings of independent bodies established to inquire into allegation of enforced disappearances have already been shared. These findings do not suggest a “persistent pattern” of disappearances. The other findings will be published in keeping with the provisions of the Sri Lankan law”*

A/HRC/8/46/Add.1, para 15:

*“Various measures to prevent disappearances are already in place. The government is working towards setting in place further measures to totally eliminate enforced disappearances”*

2. Enforced disappearance, aiding and abetting thereto are not penal code offences in Sri Lanka. The state has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CED), nor established special bodies to stop persistent pattern of enforced disappearance.
3. Extensive powers concentrated to a small group of persons in the state and government machinery, collapse of the rule of law, lack of the independence of the

judiciary, law enforcement organs including the police and security force, and prevailing culture of impunity are some of the significant factors creating the ground for continuing enforced disappearance. Without addressing these factors, effective prevention of the enforced disappearance will not be realised. However no decisive measures have been taken in this regard.

## **II. Information on the ongoing issue of enforced or involuntary disappearance in Sri Lanka**

### Disappearance since 2008

4. IMADR, together with the Committee for the Investigation of Disappearances, a community based organization in Sri Lanka, has assisted the families to report to the UN Working Group on Enforced and Involuntary Disappearances (WGEID) over a period of time. A list is prepared and attached to this submission which documents the number, person, date, place and circumstances of disappearance based on the available information. These cases have been also reported to the UN Working Group on Enforced or Involuntary Disappearance (WGEID), since the families of the disappeared were not given any positive response from the authorities in Sri Lanka.
5. In total of 356 cases have been recorded in our list, of which the oldest case was happened on 26 December 2004. According to this list, at least 285 persons have disappeared since the first examination of Sri Lanka under UPR (13 May 2008). Most of the disappearance occurred in the year of 2009 in relation to the last phase of the war and even afterwards. Circumstances of the disappearance include i) abduction or arrest by the LTTE (about 100 cases), ii) taken, abducted or arrest by the Sri Lankan Army (more than 80 cases), iii) after surrender to the Sri Lankan Army (at least 10 cases).

### Re-emergence of white-van abduction and disappearance in the post-war Sri Lanka

6. Even after the end of the armed conflict in May 2009 Sri Lanka continues to record disappearances which are still concerning fact in the daily life of Sri Lankan population. Since October 2011 at least 56 cases of disappearance were reported in the media<sup>2</sup>, most incidents occurring in broad daylight. According to the media

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<sup>2</sup><http://groundviews.org/2012/04/05/horrible-rise-of-disappearances-in-post-war-sri-lanka-continues-unabated/>

reports, at least 29 cases of disappearance including attempt abduction have occurred in the months of February (14 cases) and March (15 cases) 2012 only.<sup>3</sup> Of these 29, 16 were reported to have occurred in Colombo district, 8 in the Northern Province.

#### Writ of Habeas Corpus

7. Ensuring the right to obtain a Writ of Habeas Corpus in the event of a person being taken into custody and unlawfully detained or *incommunicado*, is one of the important means to prevent a person from enforced or involuntary disappearance. Initially only the Court of Appeal had the jurisdiction to receive and inquire into Habeas Corpus Applications (HCA). However, this was later extended to the Provincial High Courts as well. Nonetheless, since this legal remedy is time consuming and expensive, not everyone has the easy access to it. The proceedings of HCA filed by the wife and children of the disappeared journalist, Prageeth Eknaligoda is continuing with no substantive information being produced in the court related to perpetrator(s).

### **III. Information regarding the report of Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC)**

8. The Lessons Learnt and Reconciliation Commission (LLRC) was appointed by the Sri Lankan President himself in May 2010. The final report of LLRC was published in December 2011, while its interim report was mostly untouched. Although there are certain shortcomings in the mandate of the Commission, its 400 page final report contains the testimony of thousands of citizens and deals with a number of significant issues existing in Sri Lanka with useful recommendations. Unfortunately the report was made public only in English and, thus, not accessible by the majority of Sri Lankan citizens to whom the Commission and the report should actually reach.

#### Representations to the Commission regarding alleged disappearance after surrender/arrest (LLRC report, p 109 – 114)

9. Representations made by 19 relatives of former LTTE cadres are documented in the report (paras. 4.242 – 4.259). They allege that LTTE cadres who had been asked

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<sup>3</sup><http://www.scribd.com/doc/88059136/Disappearances-in-Sri-Lanka-from-Oct-2011-%E2%80%93-March-2012-based-on-media-reports>

to surrender by the Security Forces and had done so, or who had been arrested by the Security Forces were now missing.

10. In the paragraph 4.260 it further states that there is a list of more persons who have surrendered to the Army and went missing.

Allegations concerning missing persons, disappearances and abductions (LLRC report p. 156 - 166)

11. In paragraphs 5.14 – 5.34 the report documents representations made by the people in the North and East of the country that indicate thousands of cases of abduction and disappearance. These representations include allegations of missing persons, abduction and enforced disappearance caused by LTTE, Police, Security Forces, illegal armed forces and other unknown parties. Reference are also made to the cases of disappearance of persons who voluntarily surrendered to the Security Forces during the final stage of the conflict (para. 5.26), white-van abductions (para. 5.27) and clergy (para. 5.28).

12. The report further states that *“(t)here were strong concerns among members of public who made representations that criminal investigations, law enforcement, and the police administration have been adversely affected due to political interference resulting in an erosion of confidence in the criminal justice system.”*<sup>4</sup>

Disappearance and abduction by illegal armed forces (LLRC report p. 172 - )

13. Activities of illegal armed forces including a number of abduction and wrongful confinement are documented in the report (paras. 5.66 – 5.78), while whereabouts of most abductees are still unknown and some others found dead. Cases of abduction by so called “Karuna Group” and disappearance involving “white van” are also included in this part.

#### **IV. Recommendations to the Government of Sri Lanka (GOSL)**

14. The government of Sri Lanka should:
- (a) ratify the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and further take action to criminalise act of disappearance;
  - (b) appoint a Parliamentary Select Committee which should receive information

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<sup>4</sup> LLRC Report, para 5.33, p. 162

- and submit report with recommendations on the actions taken and to be taken regarding the cases of disappearance reported during the period under review and implement UPR recommendations;
- (c) establish a data-base in the Human Rights Commission on the cases of disappearance and appoint a special Task Force to deal with all pending complaints;
  - (d) invite the UN Working Group on Enforced or Involuntary Disappearance (WGEID) and receive all assistance available from OHCHR to expedite investigation and prosecution of perpetrators of enforced disappearance; and
  - (e) clarify the position of GOSL regarding the statement made by the former Attorney General, Mr. Mohan Peiris, during the examination of Sri Lanka by CAT in November 2011 that the disappeared journalist, Prageethe Eknaligoda has taken a refuge in a foreign country, in order to assist the relating court proceedings in Sri Lanka.