



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2004/NGO/39  
13 February 2004

ENGLISH ONLY

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COMMISSION ON HUMAN RIGHTS  
Sixtieth session  
Item 11 (b) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF  
DISAPPEARANCES AND SUMMARY EXECUTIONS**

**Written statement\* submitted by the Asian Legal Resource Centre (ALRC),  
a non-governmental organization in general 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 January 2004]

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

### **Enforced or Involuntary Disappearances in Sri Lanka**

1. The Asian Legal Resource Centre has brought the issue of massive enforced or involuntary disappearances in Sri Lanka to the attention of the Commission on Human Rights through numerous written and oral statements in the last few years, most recently at its fifty-ninth session (E/CN.4/2003/NGO/147). In its previous statements, the Asian Legal Resource Centre has emphasised that to date the Government of Sri Lanka has failed to implement most recommendations made by the Working Group on Enforced or Involuntary Disappearance in its December 1999 report (E/CN.4/2000/64/Add.1). These relate in particular to the prosecution of perpetrators and the making of legislative changes.

2. This year, the Asian Legal Resource Centre draws the attention of the Commission to two reasons why the families of disappeared persons in Sri Lanka are yet to obtain justice:

- a) The failure to promulgate a law to make enforced disappearances a crime, as recommended by the Working Group; and,
- b) The absence of effective investigations or prosecutions of alleged perpetrators.

3. In its Concluding Observations on 1 December 2003 with regards to the periodic report of the state party Sri Lanka, the Human Rights Committee stated that,

"It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished" (CCPR/CO/79/LKA).

4. In the same document the Committee recommended that,

"The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 7 and 9 of the Covenant, and ensure effective enforcement of the legislation. It should ensure in particular that allegations of crimes committed by State security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators."

5. The Government of Sri Lanka has at no stage explained why a law making enforced disappearances a crime has not been promulgated. No steps were ever taken to even begin drafting such a law. No instructions were ever issued by the government to carry out the recommendations of the Working Group. The lack of such indicates that Sri Lanka has no procedure for dealing with recommendations from United Nations human rights mechanisms. A procedure needs to be laid down, and made known both to the Commission as well as to the public, as an obligation under the International Covenant on Civil and Political Rights (ICCPR).

6. For the interim period, in the absence of a procedure, the Asian Legal Resource Centre suggests that the Government of Sri Lanka

- a) Inform all members of parliament when such recommendations are received.
- b) Direct the minister or ministers concerned to act on each specific recommendation without delay.
- c) Ensure that the cabinet minister responsible takes steps to see that the persons concerned are acting as instructed.
- d) Charge a competent body to carry out quarterly reviews of the above actions, and demand action where recommendations have not been pursued.

7. With regards to the making of a law on enforced disappearances in particular, the Asian Legal Resource Centre urges the Government of Sri Lanka to ensure that the Minister of Justice

- a) Refers the matter to the law drafting commission without delay.
- b) Directs the law drafting commission to prepare the said law in keeping with the spirit and letter of the Working Group recommendations.
- c) Ensures that he receives a draft as soon as possible.
- d) Places the draft before cabinet, and brings it as a bill before parliament immediately thereafter.
- e) Takes all necessary steps so that the draft goes through the normal procedure of entering into law without undue delay.

8. The Asian Legal Resource Centre urges the Commission to raise these concerns with the Government of Sri Lanka so as to make the recommendations of the Working Group meaningful.

9. Unfortunately, the mass disappearances carried out in Sri Lanka are quickly receding into memory, while the government has taken no steps to prosecute offenders. The four Presidential Commissions of Enquiry into disappearances submitted lists of specific persons against whom there is sufficient evidence to warrant further investigation and prosecution, but no action has been taken. It follows that there are many persons in Sri Lanka against whom there are prima facie cases for being engaged in causing disappearances, but about whom nothing has been done, as is normally the case when there is sufficient evidence of a crime. This failure points to a serious gap in how the law is enforced in Sri Lanka, which relates to the investigation and prosecution of crimes: the police investigate crime, but in the case of mass disappearances in Sri Lanka, they are also the suspects. Therefore, it is obvious why they have not investigated these crimes, which occurred on such a colossal scale. At no time also did the government appoint an independent body with the power to investigate and prosecute these crimes. Therefore, the Working Group's recommendations were ignored.

10. As indicated above, there needs to be a procedure to act on the recommendations by United Nations human rights bodies, in this case, to ensure successful prosecution of alleged perpetrators. The government must appoint the necessary authoritative bodies to ensure that its obligations under the ICCPR be fulfilled. As no such body has been appointed, to date the Working Group's recommendations have been meaningless. Various commissions without powers to conduct criminal investigations were appointed, but these have only resulted in the granting of virtual impunity to the accused. The fact-finding inquiries made by the National Human Rights Commission also are inadequate. And as pointed out in previous submissions, the current prosecution system, functioning within the Department of the Attorney General, is defective because it depends entirely on criminal investigation files to be made available by the police for the department to begin action on any crime. This allows the Department the excuse that it has not prosecuted known crimes because the necessary files have not been brought to it by the police. For the Government of Sri Lanka to meet its obligations under the ICCPR, therefore, it must appoint a separate body with powers and resources to investigate and prosecute the alleged perpetrators without delay.

11. If the recommendations of the Working Group on Enforced or Involuntary Disappearance are not to be forgotten altogether, the Commission and other relevant United Nations agencies should at once resume discussions with the Government of Sri Lanka on these matters. The Human Rights Committee in its concluding recommendations of December 1 itself recommended many measures to address disappearances in Sri Lanka. Not only the Committee but also other relevant bodies, including those under the special procedures of the Commission, need to pursue diligently these recommendations for them to have any effect.

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