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## Human Rights Council

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Agenda item 3

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

### **Written statement\* submitted by the Asian Legal Resource Centre, 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.

[30 May 2016]

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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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## **SRI LANKA: Proposed Office of Missing persons is no substitute for immediate investigations into murders**

It seems no progress can be made in Sri Lanka on the attitude to murder. Murder is now regarded as normal and therefore not something to worry much about. And, this is exactly what should worry everyone. But hardly anyone seems to worry about it.

We see the same thing in the proposed Office of Missing Persons (OMP). The simple fact about a missing person in Sri Lanka is that he or she is dead. Very rarely, does a missing person re-appear. As in the case of the dead, missing persons normally never appear again. At least that is case in Sri Lanka, whatever the case may be elsewhere off the Island.

When a person is dead, he or she, of course, goes missing. There is no paradox involved in this. However, it is quite a different case if we were to be told to assume that the dead person is merely a missing person. This means that we are expected to assume that the dead man or woman is not dead at all but only missing.

Why should the dead be assumed to be merely missing? The answer would be that there is no proof of death, as the dead body has not been found. The argument is that in the absence of a corpse, there is no proof of death. So this whole exercise is about proof.

If the corpse is available, then we know person is dead. If the person is, in fact, dead but his body cannot be found, we are expected assume that the person is missing. However, what is really missing is not the person, but the corpse.

If an office were to be established to look for missing dead bodies, the task of the office would be different than of an office looking for missing persons.

The situation would differ even more, if one knows or has reasonable grounds to suspect that the person is not only dead, but, in fact, killed, and the corpse has been disposed of. Obviously in such a situation, there is no need to be looking for the missing body, as the body itself has been disposed, in order to hide the fact of a murder.

In this situation, the starting point is that murderers have disposed the body in order to destroy evidence of the killing. If anything has to be sought and discovered, it is who the murderers are.

Looking for murders is not the work of a fact-finding office. Investigation into murder is the task of the criminal investigation department. A murder where the corpse has been disposed is a more gruesome form of murder, requiring greater attention of the criminal investigation department.

Then there is a greater riddle. It is that there is also reasonable ground to suspect that the killing and disposal of the body is likely to have been caused by persons connected with the security forces and conducted during operations; this is known or, at least, suspected by everyone.

In such circumstances, it is the duty of the criminal investigation department to act. If they have failed to act, it is duty of the Executive, to ensure that this most vital duty of the criminal investigation department is been complied with. If the Executive has failed to do so, it has virtually failed to govern; good governance implies that the government should enforce the law.

It is a good thing to have a database for "Missing Persons" (including those assumed to be killed and their bodies disposed). However, the obligation of a government is primarily to investigate and prosecute murder, through its criminal investigation and prosecution departments, which in Sri Lanka means the Attorney General's Department. It is good to have, in addition, a database. But, criminal justice cannot be delegated to a database.

As for soldiers who are missing in action, it is for their relevant forces and units to account for what happened to each of them and to inform the families of such persons. If there is failure in this, it should be looked into under the relevant laws and regulations of the Armed Forces.

There is an already established record of murder done in large scale during security operations. In these murders, abduction has taken the place of arrest and this had been planned. When a person is abducted in order to hide the identity of the arresting officers and the authority, so as to make it difficult to identify those who did it, there is already premeditation. From this mode of “arrest”, there is reason to deduce that those who made such an arrest are likely to know the final outcome of the same, which would be to kill and dispose of the body. These are matters that only the country’s crime investigators can deal with under criminal procedure laws.

The next riddle is why the country’s investigators and prosecutors have failed to act? Again, everyone commonly assumes the reason: that the political authorities have stopped it from happening. This being the case, there is nothing that the proposed OMP can do, except to include their observations in the proposed database.

The argument that is not so openly stated, but mooted about, is that murders of this sort should not be investigated and prosecuted as common murders for two reasons: the first is that people by and large have approved such killings of “terrorists”, and the other is that such investigations are not good for the morale of the security forces. The latter simply means, they might not do it again, if such punitive action is taken.

Doesn’t such consideration relativize the very idea of murder, especially if for such reasons murder could be justified?

There is no argument being made about the establishment of an office of missing persons or not. The argument is against such an office being made a substitute for immediate investigations and prosecutions of enforced disappearances by the legitimate authorities of Sri Lanka. If the criminal investigation department needs to wait to start investigation into all complaints, of murder, till orders are given from above, then there is a serious flaw in the investigation system. No government has any power to stop a criminal investigation department from carrying out the very functions for which it exists.

If the government wants to strengthen the Criminal Investigation Department, it could promulgate the law it promised to criminalize enforced disappearances. Sri Lanka’s Foreign Minister made such a promise to the United Nation’s Human Rights Council in June 2015. But, even a draft of such a law has not been presented to the Parliament or made available to the public.

Together with such a law, if a Special Investigation Unit (SIU) of CID is given the task of investigation into the alleged cases of enforced disappearances, and it is given adequate personnel and resources, many mysteries hidden for many years will be resolved within reasonable time frame.

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