



# General Assembly

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## Human Rights Council

Twenty-fifth session

Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

### **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.

[17 February 2014]

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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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## Suppression of human rights defenders in Sri Lanka<sup>1\*</sup>

Although the civil war in Sri Lanka came to a close in 2009, the root causes of the war remain unaddressed. The government of Sri Lanka has consistently failed to take any meaningful steps to address prevailing issues, choosing instead to utilise its military in the North to intimidate dissenting individuals.<sup>2</sup> As a result, human rights violations are widespread. Sri Lankan human rights defenders (HRDs), particularly those providing legal assistance or conducting public campaigns, are often accused of being traitors by the government, leading to widespread intimidation; often these defenders are detained or become victims of enforced disappearances.<sup>3</sup>

Violent incidents have recently declined but, as we explain, this does not mean the situation is improving but merely that the tactics of the Government are evolving. Indeed many HRDs feel the situation is as bad as it has ever been, with a climate of fear and intimidation continuing the oppression previously achieved by murders and disappearances.

Moreover, despite the seriousness of these human rights abuses, a lack of accountability persists that further reinforces a culture of impunity within Sri Lanka. The persistent lack of accountability in the country necessitates the establishment by the Human Rights Council of an effective, independent and international Commission of Inquiry.

### Sri Lanka's international obligations

As a party to the International Covenant on Civil and Political Rights (ICCPR), Sri Lanka is obligated to uphold and ensure the rights of human rights defenders.<sup>4</sup>

Although Sri Lanka has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, it has been recognised within international human rights law that enforced disappearances may constitute a form of torture or cruel, inhuman or degrading treatment.<sup>5</sup> As a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Sri Lankan government violates international law by condoning or failing to prevent, investigate and punish enforced disappearances.<sup>6</sup>

### Sri Lanka's domestic legal sphere

The Prevention of Terrorism (Temporary Provisions) Act of 1979 (PTA) provides broad powers to hold individuals without charge or trial. Vague definitions of offences have led to continued detention without charge of political opponents including HRDs.<sup>7</sup> In May of last year Muslim rights activist and politician Azath Salley was arrested and detained for a month under this law, only being freed after an international media campaign<sup>8</sup>.

### Culture of fear and intimidation

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<sup>1</sup> The Human Rights Centre Clinic at the University of Essex undertook research and analysis in preparation of this submission. The Sri Lanka Campaign for Peace and Justice assisted with the editorial process.

<sup>2</sup> Sudha Ramachandran, *Sri Lanka: "The war is over but tensions run high"* (The Diplomat, 13 December 2012), <http://thediplomat.com/2012/12/sri-lanka-war-is-over-but-tensions-run-high/2/>

<sup>3</sup> Sri Lanka's assault on dissent, Amnesty International: <http://www.amnesty.org/en/library/info/ASA37/003/2013/en>

<sup>4</sup> United Nations Human Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>5</sup> International legal standards indicate that the nature of enforced disappearances is such that it may constitute torture or other cruel, inhuman or degrading treatment. See, for example: The United Nations Declaration on Enforced Disappearances, A/RES/47/133 (1992), Art. 1(2); *Velasquez Rodriguez*, IACtHR, Ser.C No.4 (1989), paras. 156, 187; Rome Statute of the International Criminal Court, A/CONF.183/9 1998 (entered into force 2002), Article 7(1)(i) [as a crime against humanity].

<sup>6</sup> CAT, Articles 1, 2(1), 12-14, 16.

<sup>7</sup> Amnesty International, "Sri Lanka, Annual report 2013", <http://www.amnesty.org/en/region/sri-lanka/report-2013>

<sup>8</sup> Sri Lanka Campaign, "Salley has been released, but now the lying game starts" (Blog, 16 May 2013) <http://blog.srilankacampaign.org/2013/05/sally-has-been-released-but-now-lying.html>

Several reprisals have occurred since the Commonwealth Summit took place in early November 2013.

The Criminal Investigation Division visited Sunesh, an activist and HRD, on 21 November 2013.<sup>9</sup> He received a phone call asking him to come out of the house. The individual threatened Sunesh, asking him if he wanted to be alive and if he wished harm upon his family. Individuals then banged on the door for about half an hour before leaving.

Days later Fr. Johnpillai, a Sri Lankan priest, was harassed. Two men claiming to be from the intelligence unit visited Fr. Johnpillai on 26 November 2013.<sup>10</sup> The men accused the priest of holding a mass to honour the birthday of a Liberation Tigers of Tamil Eelam (LTTE) leader. One of the men pointed a pistol at his head, threatening to shoot him. When the men left, the priest reported the incident, but the police claimed that they were unable to identify the perpetrators.<sup>11</sup> Another priest in the same area, Fr Yogeswaran, a HRD who had met the UN High Commissioner for Human Rights, had been harassed and intimidated earlier in the year.<sup>12</sup>

The state media has also been utilised to instil a culture of fear. On 4 November 2013, Ms Nimalka Fernando, the President of an NGO, was subjected to a campaign of intimidation by state media.<sup>13</sup> A radio programme ran a story on her entitled “Stoning the Sinner Woman”.<sup>14</sup> This led to individuals calling into the programme, making statements such as, “[w]e cannot allow persons like Nimalka Fernando to live in their society”.<sup>15</sup> Such campaigns are frequently employed to intimidate HRDs and activists into silence.<sup>16</sup>

### Enforced disappearances

According to campaigners, 57 unexplained abductions occurred between January and July 2012 within Sri Lanka.<sup>17</sup> Of the kidnappings that were witnessed, most were said to have taken place in white vans.<sup>18</sup> The ubiquity of white vans in these disappearances has resulted in an ability to produce fear by use of white vans alone, without the need for further actual incidents. Nevertheless, isolated incidents continue to occur.<sup>19</sup>

Sivasooriyakumar Sanaraj, a 15-year-old boy, left his home near Vavuniya to go to school on 13 June 2013, but never returned.<sup>20</sup> Despite his aunt reporting the incident to the local police, they refused to take the case seriously. On 28 June, Sanaraj’s father and a friend noticed an auto-rickshaw pass by carrying three men and a young boy with his hands bound behind his back. Later, the rickshaw passed by again with one man present. The men seized this passenger and took him to the police. The police turned them away. The men questioned the passenger themselves, who boasted of

<sup>9</sup> Sri Lanka Campaign for Peace and Justice, “Reprisals start in Mannar” (Blog, 21 November 2013), [http://blog.srilankacampaign.org/2013\\_11\\_01\\_archive.html](http://blog.srilankacampaign.org/2013_11_01_archive.html).

<sup>10</sup> Frances Harrison, “Catholic Priest threatened” (Blog, 28<sup>th</sup> November 2013), <http://www.stillcountingthedeath.com/wp/?p=7489>

<sup>11</sup> *Ibid.*

<sup>12</sup> Colombo Telegraph, “Fr. Yogeswaran Harassed After Pillay Meeting” (September 13<sup>th</sup> 2013) <https://www.colombotelegraph.com/index.php/fr-yogeswaran-harassed-after-pillay-meeting/>

<sup>13</sup> World Organisation against Torture, “Sri Lanka: Smear campaign and threats against Ms Nimalka Fernando”, (14 November 2013), <http://www.omct.org/human-rights-defenders/urgent-interventions/sri-lanka/2013/11/d22439/>; Association for Women’s Rights in Development, “Sri Lanka: Continued harassment and defamation of WHRD Mme Nimalka Fernando”, (19 November 2013), <http://www.awid.org/Library/Sri-Lanka-Continued-harassment-and-defamation-of-WHRD-Mme-Nimalka-Fernando>.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Other examples include the obstruction of a Rights Now Seminar on devolution in Ampara in July:

<http://www.rightsnow.net/?p=3010>, the publication of false reports about the human rights NGO CPA:

<http://www.cpalanka.org/human-rights-commissions-of-sri-lanka-hrcsl-complaint-against-the-independent-television-network-of-sri-lanka-itn/>, and the threats to arrest the two Tamil Catholic bishops after they met United States Ambassador-at-Large for War Crimes Issues Stephen Rapp: <http://www.dailymirror.lk/news/41674-ravana-balaya-wants-two-bishops-arrested.html>

<sup>17</sup> Watchdog, *A disappearance every five days in post-war Sri Lanka*, (30 August 2012), <http://groundviews.org/2012/08/30/a-disappearance-every-five-days-in-post-war-sri-lanka/>

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Amnesty International, *Child feared abducted in Sri Lanka*, (4 July 2013), <http://www.amnestyusa.org/sites/default/files/uaa17213.pdf>

connections senior police officers, including members of the Criminal Investigation Department. Asking him to describe the previous rickshaw passengers, the man described the boy as having a red scar on his ear and lip, just like Sanaraj. Nonetheless, the police have failed to conduct any investigation.<sup>21</sup>

While there is no suggestion that Sanaraj is connected to HRDs, his abduction, fitting as it does within a pattern of behaviour and impunity by senior military and police figures in the north, contributes to the culture of fear which allows HRDs and others to be easily suppressed.

### **Commission of Inquiry**

Following an oral update on promoting reconciliation and accountability in Sri Lanka, the United Nations High Commissioner for Human Rights urged the Government to broaden its Commission of Inquiry's mandate to include disappearances post-2009.<sup>22</sup> She also "stressed the need for the inquiry to be more effective than the five previous commissions of this kind, whose recommendations were not always published and never fully implemented".<sup>23</sup>

The High Commissioner further restated the Human Rights Council's recommendations in resolution A/HRC/22/L.1/Rev.1.<sup>24</sup> Despite this, the government of Sri Lanka is yet to adequately address any of these, or its own, recommendations. This failure, and the ongoing systemic issues of accountability within the country are illustrative of the government's unwillingness to establish effective mechanisms to investigate violations and hold those responsible for them accountable.

Thus, an effective, independent and international Commission of Inquiry must be immediately established within the United Nations, ensuring that witnesses and victims are protected in all proceedings. This international inquiry must have the power to investigate allegations of human rights and humanitarian law violations occurring both during and post-war, including allegations of "white van" disappearances that have occurred post-2009.

### **Recommendations**

We call upon the government of Sri Lanka to:

- Collaborate with the international community in the establishment of a United Nations Commission of Inquiry to ensure transparency, independence and accountability;
- Effectively investigate allegations of human rights and humanitarian law violations, identifying and punishing perpetrators;
- Reform legislation to provide for victim and witness protection and criminalisation of enforced disappearances;
- Ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearances.

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\* The Human Rights Clinic Centre (University of Essex), Sri Lanka Campaign for Peace and Justice NGO(s) without consultative status, also share the views expressed in this statement.

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<sup>21</sup> *Ibid.*

<sup>22</sup> Human Rights Council, *Oral update of the High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka*, A/HRC/CRP.3/Rev.1 (2013), [http://www.tamilnet.com/img/publish/2013/09/A-HRC-24-CRP-3-Rev1\\_en.pdf](http://www.tamilnet.com/img/publish/2013/09/A-HRC-24-CRP-3-Rev1_en.pdf)

<sup>23</sup> *Ibid.*, para. 13.

<sup>24</sup> Para. 3.