



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**INTERNATIONAL CONVENTION FOR THE
PROTECTION OF ALL PERSONS FROM
ENFORCED DISAPPEARANCE
ACT, No. 5 OF 2018**

[Certified on 21st of March, 2018]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic
Socialist Republic of Sri Lanka** of March 23, 2018

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA
TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 5

Price : Rs. 16.00

Postage : Rs. 10.00

This Act can be downloaded from www.documents.gov.lk



*International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

[Certified on 21st of March, 2018]

L.D.—O. 9/2016.

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE; TO ENSURE THE RIGHT TO JUSTICE AND REPARATION TO VICTIMS OF ENFORCED DISAPPEARANCE; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS Sri Lanka became a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance on December 10, 2015 (hereinafter referred to as the “Convention”):

Preamble.

AND WHEREAS by an instrument of ratification dated May 3, 2016, and deposited with the Secretary-General of the United Nations Organization on May 25, 2016, Sri Lanka ratified the aforesaid Convention:

AND WHEREAS the aforesaid Convention has entered into force in respect of Sri Lanka, with effect from June 24, 2016:

AND WHEREAS it has become necessary for the Government of Sri Lanka to make legislative provision to give effect to Sri Lanka’s obligations under the aforesaid Convention:

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018 and shall come into force on the date of Certification in terms of Article 79 of the Constitution.

Short title.

2 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

Convention
States.

2. The Minister may, by Order published in the *Gazette*, certify the States which are parties to the Convention. A State in respect of which an Order is made under this section, is hereinafter referred to as “a Convention State”.

Enforced
Disappearance
etc.

3. (1) Any person who, being a public officer or acting in an official capacity, or any person acting with the authorization, support or acquiescence of the State -

(a) arrests, detains, wrongfully confines, abducts, kidnaps, or in any other form deprives any other person of such person’s liberty; and

(b) (i) refuses to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty; or

(ii) conceals the fate of such other person; or

(iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person,

shall be guilty of the offence of enforced disappearance, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(2) Any person who -

(a) wrongfully confines, abducts, kidnaps or in any other form deprives any other person of such person’s liberty; and

(b) (i) refuses to acknowledge such wrongful confinement, abduction, kidnapping, or deprivation of liberty; or

International Convention for the Protection of 3
All Persons from Enforced Disappearance
Act, No. 5 of 2018

- (ii) conceals the fate of such other person; or
- (iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person,

shall be guilty of an offence under this Act, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(3) A superior who –

- (a) knows, or consciously disregards information which clearly indicated, that subordinates under the effective authority and control of such superior were committing or about to commit an offence under subsection (1);
- (b) exercises effective responsibility for and control over activities which were concerned with the offence of enforced disappearance; and
- (c) fails to take all necessary and reasonable measures within his power to prevent or repress the commission of an offence under sub section (1) or to submit the matter to a law enforcement authority for investigation and prosecution,

shall be guilty of the offence of enforced disappearance, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

4 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

(4) In this section “wrongful confinement”, “kidnapping” and “abduction” have the same meaning as in sections 331, 350, 351, 352 and 353 of the Penal Code.

Aiding, abetting,
attempt &
conspiracy.

4. (1) Any person who aids or abets the commission of any offence set out in section 3, or conspires or attempts to commit any offence set out in section 3, shall be guilty of an offence under this Act, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(2) In this section “abet” and “conspiracy” have the same meaning as in sections 100, 101 and 113A respectively, of the Penal Code.

Cognizable and
non-bailable
offence.

5. Every offence under this Act shall be a cognizable offence and a non-bailable offence, within the meaning, and for the purposes of the Code of Criminal Procedure Act, No. 15 of 1979.

High Court to
try offences
under this Act,
and penalties.

6. (1) The High Court of Sri Lanka holden in Colombo, or the High Court established under Article 154P of the Constitution, for the Western Province holden in Colombo, shall notwithstanding anything to the contrary in any other written law, have exclusive jurisdiction to try offences under sections 3 and 4 of this Act.

(2) Where an act constituting an offence under this Act is committed outside Sri Lanka, the High Court referred to in subsection (1), shall have the jurisdiction to try such offence as if it were committed within Sri Lanka, if -

- (a) the offender whether he is a citizen of Sri Lanka or not is present in any territory under the jurisdiction of Sri Lanka;

International Convention for the Protection of 5
All Persons from Enforced Disappearance
Act, No. 5 of 2018

- (b) the person alleged to have committed the offence is a citizen of Sri Lanka, or a national of another State which is a party to the Convention, or by a stateless person who has his habitual residence in Sri Lanka; or
- (c) such act is committed against, or on board -
 - (i) a ship flying the flag of Sri Lanka; or
 - (ii) an aircraft registered in Sri Lanka at the time of the commission of the offence;
- (d) the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka.

7. Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled -

Rights of certain persons arrested for offences under this Act.

- (a) to communicate without delay, with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights, or if he is a stateless person, with the nearest appropriate representative of the State in the territory of which he was habitually resident;
- (b) to be visited by a representative of that State; and
- (c) be informed of his rights under paragraphs (a) and (b).

8. Where a request is made to the Government of Sri Lanka, by or on behalf of the Government of a Convention State for the extradition of any person accused or convicted of an offence under sections 3 or 4, the Minister shall, on behalf of the Government of Sri Lanka, forthwith notify the Government of the requesting State of the measures which the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person for that offence.

Minister to notify requesting State of measures taken against persons for whose extradition request is made.

6 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

Assistance to
Convention
States.

9. (1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under sections 3 or 4, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act.

(2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act nor a Non-Commonwealth country with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act, then the Government may afford all such assistance to, and may through the Minister request all such assistance from, a Convention country, as may be necessary for the investigation and prosecution of an offence under sections 3 or 4, to the extent required for the discharge of its obligations under the Convention (including assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).

(3) The grant of assistance to a Convention country may be made subject to such terms and conditions as the Minister thinks fit.

Existing
extradition
arrangements
with Convention
States deemed to
provide for
offences.

10. Where there is an extradition arrangement made by the Government of Sri Lanka with any Convention State in force on the date on which this Act comes into operation, such arrangement shall be deemed for the purposes of the Extradition Law, No. 8 of 1977, to include provision for the extradition in respect of the offences under this Act.

International Convention for the Protection of 7
All Persons from Enforced Disappearance
Act, No. 5 of 2018

- 11.** Where there is no extradition arrangement made by the Government of Sri Lanka with any Convention State, the Minister may by Order published in the *Gazette*, treat the Convention, for the purposes of the Extradition Law, No. 8 of 1977 as an extradition arrangement, made by the Government of Sri Lanka with the Convention State providing for extradition in respect of the offences under this Act.
- Minister may treat Convention as an extradition arrangement between Sri Lanka and certain Convention States.
- 12.** The Extradition Law, No. 8 of 1977 is hereby amended in the Schedule to that Law, by the addition immediately after item 37 of the items appearing immediately before Part B of that Schedule, of the following item:—
- Amendment to the Extradition Law, No. 8 of 1977.
- “(37A) An offence within the scope of the Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018.”.
- 13.** Notwithstanding anything in the Extradition Law, No. 8 of 1977, an offence specified in the Schedule to that Law or an offence under this Act, shall for the purposes of that Law be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, for the purposes only of the extradition of any person accused or convicted of any such offence, as between the Government of Sri Lanka and any Convention State, or of affording assistance to a Convention State under section 9 of this Act.
- Offences under this Act not to be political offences for the purposes of the Extradition Law.
- 14.** (1) Every victim and relative of a victim shall have the right to know the truth regarding the circumstances of an enforced disappearance, the progress and results of the investigation as are carried out by the law enforcement authorities, and the fate of the disappeared person.
- Rights of victims and relatives-vis-à-vis law enforcement authorities.
- (2) Every victim and relative of a victim shall, subject to restrictions placed by law, have the right to form and freely participate in organizations and associations concerned with attempting to establish the circumstances of offences

8 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

committed under section 3 and the fate of disappeared persons, and to assist victims of offences under section 3.

(3) Where there are reasonable grounds for believing that a person has been subjected to an offence under section 3, law enforcement authorities shall undertake an investigation, even if there has been no formal complaint.

(4) Law enforcement authorities shall take all appropriate measures to search for and locate the disappeared person, and in the case of a person held in secret detention, procure the release of such person, and in the event of death, to locate, respect and return the remains of such person.

Obligations
concerning
deprivation of
liberty.

15. (1) No person shall be held in secret detention.

(2) Any person deprived of liberty shall have the right to communicate with and be visited by his relatives, attorney-at-law or any other person of his choice, subject only to the conditions established by written law.

(3) Law enforcement authorities, and the Human Rights Commission of Sri Lanka, shall have access to the places where persons are deprived of liberty.

(4) Law enforcement authorities shall assure the compilation and maintenance of up-to-date official registers or records of persons deprived of liberty, which shall be promptly made available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law, and shall contain -

- (a) the identity of the person deprived of liberty;
- (b) the date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

International Convention for the Protection of 9
All Persons from Enforced Disappearance
Act, No. 5 of 2018

- (c) the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) the authority responsible for supervising the deprivation of liberty;
- (e) the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) information relating to the state of health of the person deprived of liberty;
- (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and
- (h) the date and time of release or transfer to another place of deprivation of liberty, the destination of the place of deprivation of liberty to which a person is transferred, and the authority responsible for the transfer.

16. (1) Any relative of a person deprived of liberty, the representative of a person deprived of liberty or an attorney-at-law of a person deprived of liberty shall have the right to access the following information:-

Rights of
relatives,
representatives
and attorneys-at-
law.

- (a) the person or authority that ordered the deprivation of liberty;
- (b) the date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
- (c) the authority responsible for supervising the deprivation of liberty;

10 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

- (d) the whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- (e) the date, time and place of release;
- (f) information relating to the state of health of the person deprived of liberty; and
- (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

(2) Any person referred to in subsection (1) of this section, as well as persons participating in the investigation, shall be protected from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

(3) Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, any person referred to in subsection (1) shall have the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in subsection (1) of this section, and such right to a remedy shall not be suspended or restricted in any circumstances.

Interference
with and
influencing
investigations,
and failure to
record or refusal
to provide
information.

17. (1) any person, including a person suspected of having committed an offence under sections 3 or 4 of this Act, who -

- (a) interferes with the conduct of an investigation;
- (b) influences the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their attorney-at-law or persons participating in the investigation;

International Convention for the Protection of 11
All Persons from Enforced Disappearance
Act, No. 5 of 2018

- (c) being the officer responsible for the official register, intentionally fails to record the deprivation of liberty of any person, or records any information which he knew to be inaccurate;
- (d) refuses to provide information on the deprivation of liberty of a person, or provides inaccurate information, notwithstanding the fact that legal requirements for providing such information have been met,

shall be guilty of an offence under this Act.

(2) A person guilty of an offence under subsection (1) shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding seven years and to a fine not exceeding five hundred thousand rupees.

18. (1) No person shall be expelled, returned, surrendered or extradited to another State where there are substantial grounds for believing that such person would be in danger of being subjected to enforced disappearance.

No extradition where there is a possibility of such person being subjected to enforced disappearance.

(2) For the purpose of determining whether there are such grounds referred to in subsection (1) of this section, all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law shall be taken into account.

(3) The Minister may make regulations prescribing the criteria upon which a person may be expelled, returned, surrendered or extradited to another State.

19. Without prejudice to the use of information in criminal proceedings relating to an offence committed under this Act, or the exercise of the right to obtain reparations,

Privacy and data protection.

12 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

personal information, including medical and genetic data, which is collected or transmitted within the framework of the search for a disappeared person, shall not be used or made available for purposes other than the search for the disappeared person, and shall not be collected, processed, used or stored in a manner that infringes or has the effect of infringing the fundamental rights and freedoms or dignity of a person.

Enforcement of
the provisions of
this Act.

20. (1) Without prejudice to any judicial or other remedy provided for by or under any written law, any person with a legitimate interest shall be entitled to apply by way of petition addressed to the High Court seeking the enforcement of sections 7, 14, 15, 16 or 19 of this Act and to plead for such relief or redress as shall be prayed for in such petition.

(2) The jurisdiction of the High Court may be invoked under subsection (1) of this section by any person with a legitimate interest, by himself or through any other person on his behalf, within three months of the date on which the non-enforcement of sections 7, 14, 15, 16 or 19 of this Act becomes known to such person, as the case may be.

(3) Notwithstanding anything to the contrary in any other law, the High Court may, where it considers it appropriate at any stage of the proceeding relating to a petition made to it under subsection (1) of this section, refer such matter to the Human Rights Commission of Sri Lanka for an inquiry and report and request such Commission to submit its report to the High Court within such time as shall be stipulated by the Court for that purpose.

(4) The High Court shall have the power to grant the relief prayed for in a petition made to it under subsection (1) or grant such other relief or make such direction as it may consider just and equitable, in the circumstances of the case.

(5) Any person aggrieved by an order made by the High Court in any petition filed under this section, shall have a

International Convention for the Protection of 13
All Persons from Enforced Disappearance
Act, No. 5 of 2018

right of appeal to the Supreme Court against such order within six weeks of the date on which such order is made.

21. The Minister may from time to time issue guidelines or such general or special directions as may be required for the effective implementation of the principles and provisions of the Convention to such extent as is necessary to give full effect to Sri Lanka's international obligations under the Convention.

Minister to issue guidelines or directions.

22. (1) Without prejudice to any provision in this Act, the Minister may make regulations for the purpose of giving effect to the principles and provisions of this Act or any matter which is prescribed or in respect of which regulations are required or authorized under this Act to be made.

Regulations.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in such regulation.

(3) Every regulation made by the Minister, shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved, shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

23. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

Provisions of this Act to prevail over other written law.

24. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

14 *International Convention for the Protection of
All Persons from Enforced Disappearance
Act, No. 5 of 2018*

Interpretation.

25. In this Act, unless the context otherwise requires -

“effective authority and control” means the power to issue orders to subordinates and the capacity to ensure compliance with such orders;

“deprivation of liberty” means the confinement of a person to a particular place, where such person does not consent to that confinement;

“Human Rights Commission of Sri Lanka” means the Human Rights Commission of Sri Lanka, established by the Human Rights Commission of Sri Lanka Act, No. 21 of 1996;

“law enforcement authority” means a police officer or any other person or institution authorized by or under any written law to investigate into the commission of an offence;

“secret detention” means circumstances in which a person is held in a place that is not a place of detention authorized by or under any written law, and where the whereabouts or fate of the person are not known to his relatives or others;

“victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

