



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

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**INTERNATIONAL CONVENTION FOR THE  
PROTECTION OF ALL PERSONS FROM  
ENFORCED DISAPPEARANCE**

**A**

**BILL**

**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.**

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**[Bill No. 167]**

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*International Convention for the Protection of  
All Persons from Enforced Disappearance*

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 Preamble.  
International Convention for the Protection of All Persons  
from Enforced Disappearance on December 10, 2015  
(hereinafter referred to as the “Convention”):

5 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:

10 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:

15 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 Short title.  
for the Protection of All Persons from Enforced  
Disappearance Act, No. of 2017 and shall come into force  
20 on the date of Certification in terms of Article 79 of the  
Constitution.

2     *International Convention for the Protection of  
All Persons from Enforced Disappearance*

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”.

Convention  
States.

5     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 -

Enforced  
Disappearance  
etc.

10     (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

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

20     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.

25     (2) Any person who -

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

30     (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*

(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,

5

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.

10

(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);

15

(b) exercises effective responsibility for and control over activities which were concerned with the offence of enforced disappearance; and

20

(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,

25

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.

30

4     *International Convention for the Protection of  
All Persons from Enforced Disappearance*

(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.

5     4. (1) Any person who aids or abets the commission of Aiding  
any offence set out in section 3, or conspires or attempts to abetting  
commit any offence set out in section 3, shall be guilty of an attempt &  
offence under this Act, and shall after conviction after trial conspiracy.  
on indictment by the High Court, be punished with  
imprisonment for a term not exceeding twenty years, and  
10 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  
15 the Penal Code.

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

20     6. (1) The High Court of Sri Lanka holden in Colombo, High Court  
or the High Court established under Article 154P of the to try  
Constitution, for the Western Province holden in Colombo, offences  
shall notwithstanding anything to the contrary in any other under this  
written law, have exclusive jurisdiction to try offences under Act, and  
25 sections 3 and 4 of this Act. penalties.

(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 -

30     (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*

- 5 (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;
- 10 (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.

- 15 (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;
- 20 and
- (b) to be visited by a representative of that State; and
- (c) be informed of his rights under paragraphs (a) and (b).

- 25 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*

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  
5 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  
10 terms of the aforesaid Act.

Assistance to  
Convention  
States.

(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  
15 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  
20 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  
25 be made subject to such terms and conditions as the Minister thinks fit.

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,  
30 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.

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

*International Convention for the Protection of* 7  
*All Persons from Enforced Disappearance*

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. of 2017.”.

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*

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,  
5 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  
10 the release of such person, and in the event of death, to locate, respect and return the remains of such person.

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

Obligations concerning deprivation of liberty.

(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  
15 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.

20 (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  
25 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*

- (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;
  - 5 (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;
  - 10 (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
  - 15 (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.
- 20 **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;
  - 25 (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*

(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;

5        (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  
10       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  
15       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  
20       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.

17. (1) any person, including a person suspected of  
having committed an offence under sections 3 or 4 of this  
25       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  
30       the disappeared person or their attorney-at-law or  
at persons participating in the investigation;

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

*International Convention for the Protection of* 11  
*All Persons from Enforced Disappearance*

- (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;
- 5       (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,
- 10 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
- 15 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.
- 20       (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
- 25 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.
- 30       **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,

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

Privacy and data protection.

12 *International Convention for the Protection of  
All Persons from Enforced Disappearance*

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  
5 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.

20 **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.

Enforcement  
of the  
provisions of  
this Act.

15 (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  
20 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  
25 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.

30 (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*

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

5     **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.

10    **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.

15    (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.

20    (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.

25    **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.

30    **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*

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

“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;

10 “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;

15 “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;

20 “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;

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

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