

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

Part II of February 09, 2017

SUPPLEMENT

(Issued on 09. 02. 2017)



**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.**

Ordered to be published by the Prime Minister

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

Preamble.

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

Short title.

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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,

shall be guilty of the offence of enforced disappearance, and
shall after conviction after trial on indictment by the High
20 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

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(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,

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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);

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(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,

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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.

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(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
penalties.
25 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 -

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;

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

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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.

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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

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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;

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- (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.
- 16.** (1) Any relative of a person deprived of liberty, the
20 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;

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(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.

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- (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. No extradition where there is a possibility of such person 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, Privacy and data protection.

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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

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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.

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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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