



# General Assembly

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## Human Rights Council

### Fortieth session

25 February–22 March 2019

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 African Green Foundation International, 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.

[12 February 2019]

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\* Issued as received, in the language(s) of submission only.



## **OISL report 30/1, more precisely A/HRC/30/61, is seriously flawed. There was no Enforced Disappearance**

### **Introduction**

On 23rd March 2017, GSLF sponsored and handed over comprehensive report called “A Factual Appraisal of the OISL Report: A Rebuttal to the Allegations Against the Armed Forces” (the “Rebuttal”) to the Human Rights Officer, Asia-Pacific Section, Mr. Thomas Hunecke at the 34<sup>th</sup> Human Rights Council session negating all above allegations.

However, there is no any response from the UNHRC, especially from the outgoing UNHRC, relating to our first submission (the “Rebuttal”) to clear the Sri Lankans from the alleged War Crimes.

### **Therefore,**

We the GSLF, take with thank this opportunity to just brief you why and how we deny the allegations and established the truth referring to the Rebuttal and various exculpatory evidence.

### **How?**

- a) The allegation is that, “enforced disappearance” is a common phenomenon in Sri Lanka and has been carried out with impunity by successive governments. “...for example, the Working Group on Enforced or Involuntary Disappearances (WGEID) reported a total of 12,536 complaints of enforced disappearances registered over the year... 2014... the second highest number of disappearances on the list of the Working Group from any country in the world... OISL gathered consistent information... gathered by international and Sri Lankan NGOs... OISL interviewed members of organizations working directly... number of former detainees”

OISL report, para 388, 394, 395; Rebuttal to OISL report, para 230.

- b) The *defects* with the Panel’s argument with respect to enforced disappearance can be discussed under three heads:
- i. An attempt to suggest that there is an enormous number of enforced disappearances when in fact there is an enormous number of complaints of disappearances;
  - ii. An attempt to suggest that the Presidential Commissions and other mechanisms appointed to investigate enforced disappearances were all biased in favour of the government;
  - iii. Failure to consider the conclusions of the Paranagama Commission (1st Mandate).

Rebuttal to OISL report, para 231.

- c) The number of enforced disappearances verses complaints of enforced disappearances:
- i. ...the panel is trying to convey the impression that Sri Lanka is one of the world’s worst, if not *the* worst, offender when it comes to enforced disappearances.
  - ii. It is pertinent to note that the number 12,536 refers to *complaints* of disappearances and not to actual or verified disappearances.
  - iii. ...case of Mr. Kardivel Thayapararaja it is not difficult to see how there could be a large number of complaints of enforced disappearances against Sri

Lanka without those disappearances necessarily corresponding to real disappearances.

- iv. When the Panel says that the GOSL's response to WGEID's queries "was considered not sufficient to clarify the cases," the Panel is referring to the WGEID's assessment that the information was insufficient for the said purpose. The Panel doesn't say whether the Panel considered the information in order to decide for itself whether the information in question was insufficient.
- v. The mandate of the Panel was to carry out a comprehensive investigation into purported serious abuses of human rights and other crimes in Sri Lanka, which entails that the Panel must do something more than merely repeat the conclusions of other agencies and groups.
- vi. Under the circumstances, the Panel cannot draw the inferences that it is seeking to draw from the purported fact that there is an enormous number of complaints of disappearances with respect to Sri Lanka.

Rebuttal to OISL report, para 232, 233, 234, 237, 238, 240.

d) Criticism of the Presidential Commissions

- i. ...the Panel reviews various Presidential Commissions and other mechanisms that the GOSL had used over the years to investigate allegations of enforced disappearances. The general theme of these reviews is that the mechanisms in question were all biased in favour of the government, and therefore their conclusions cannot be trusted.

Rebuttal to OISL report, para 241

- ii. A typical example is the Panel's discussion of the Mahanama Thilakaratne Commission (September 2006 and May 2007). The Panel says, *inter alia*:
  - 1. In September 2006, in response to increasing criticism about the resurgence of abductions and disappearances after 2005,
  - 2. President Rajapaksa set up a Presidential Commission on Abductions, disappearances, and Killings, headed by former judge Mahanama Tillakaratne.
  - 3. His final report was submitted in May 2007 but not made public.
  - 4. However, OISL has also reviewed a copy of the unpublished report.
- iii. Then Panel have found that:
  - 1. "some invisible hand" in Jaffna and Batticaloa was responsible for abductions
  - 2. "no one said a single word against anyone in the army or police" involved
  - 3. disappearances linked the result of criminals, family disputes, "abductions ..... to win over young girls", and heroin addicts involved in disputes.
  - 4. a majority of the abductions were not exactly abductions as [the persons concerned] have left their homes temporarily over trivial matters like family disputes among other.
  - 5. some of the abductees when they were last seen seemed to have gone with the people whom they knew and of their own free will.
  - 6. The Report noted that only a few people had been taken away by force. They should be treated as persons who have performed an illegal act.

OISL report, para 486, 487, 488; Rebuttal to OISL, para 242

7. Clearly, the Panel doesn't like the judge's conclusions. But, what if the judge is right? ... The Panel's position appears to be that if a person says something that is inconvenient for the Panel's purposes, it necessarily means that he cannot be believed.

Rebuttal to OISL, para 244, 248

iv. The Paranagama Commission (1st Mandate)

1. The Paranagama Commission (1st Mandate) was established in August 2013 and tasked with inquiring into all alleged disappearances in the North and East during the period January 1983 – 19th May 2009.
  - The Commission took direct testimony from members of the public for over three months.
  - The Commission received 20509 complaints, out of which 4032 were found to be duplicates.
  - Therefore, the Commission received a total of 16477 from the public.
  - Meanwhile, the Commission also received 5400 complaints from the armed forces.
  - The mandate of the Commission expired in July 2016, and the GOSL chose not to extend that mandate, and instead launched the Office of Missing Persons.

Rebuttal to OISL, para 250 to 252

2. The Paranagama Commission could have been a vital source of information for the OISL Panel because of the following reasons:
  - Even though the Commissioner could not investigate all of the complaints that it received (because of the expiry of the mandate) it did investigate a number of those complaints.
  - It compiled a vast data base of the complaints and made it available to the GOSL, or any other institution or agency that might be interested in investigating those complaints.
  - In a significant number of cases, the "disappeared" had either gone abroad or was living in Sri Lanka under a different name.

Rebuttal to OISL, para 253, 254, 255

3. The following are a few of the Commission's findings up to 15<sup>th</sup> July 2016:

File number	Missing person	Findings
5388	<i>Ramakrishnan Rohini</i>	<i>According to the Department of Immigration and Emigration she has left to Jordan on 26th July 2011 and returned back on 19th August 2013.</i>
486	<i>Sivasothy Sivaraman</i>	<i>According to the Report given by the Department of Immigration and Emigration he had gone abroad on 31st January 2003, and did not return back.</i>
4102	<i>Thurai rasa Rasu</i>	<i>He was arrested by Army and released in 2010.</i>
96	<i>Vinayagam</i>	<i>Former LTTE Political Wing Leader went abroad in 2010 and now living in France according to his wife's statement he was in 2015 at Varani, Chavakachery</i>

	<i>Kumaran and his wife Yaso Balachandran</i>	<i>went missing from Kombamadu Army Camp now traced to Schaffhausen, Switzerland where they are now living.</i>
18811	<i>Y.J.B. Karunathilaka</i>	<i>went missing in 9th February 2013 has gone to Dubai on 16th February 2013 according to Department of Immigration and Emigration.</i>
4102	<i>Thurairasa Suman</i>	<i>was arrested by army and later they have released him in Kandy.</i>
4915 / 3821	<i>Thiyagu Karunadasan</i>	<i>later Rehabilitated and freed</i>
	<i>M. Anbugam</i>	<i>from Thalaimannar was later found to be living in Talawakalle with his fiancée.</i>

Rebuttal to OISL, para 255

- The Panel could have investigated a number of the complaints that the Commission had had no time to pursue, in order to find out if they *confirm* the Panel's hypothesis. There is not the slightest indication that the Panel made any attempt to investigate any of the complaints in the Paranagama Commission's database.
- Rebuttal to OISL, para 257, 258
- Thus, the Panel's argument about Sri Lanka being one of the world's worst if not the worst offender when it comes to enforced disappearance... are based on mere unsubstantiated opinions.

Rebuttal to OISL, para 259

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Global Srilankan Forum Exco NGO(s) without consultative status, also share the views expressed in this statement.