

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL LKA 7/2020

9 November 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 36/7, 45/3, 44/5, 41/12, 43/16, 43/20 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged regression in the transitional justice measures that Sri Lanka had adopted, or committed to implement, to address the serious human rights violations committed during the 25-year conflict, as well as the obstacles imposed on memorialization efforts led by victims' groups and the intimidation of victims and civil society**

We would like to recall joint communication AL LKA 1/2020 sent on 11 May 2020, concerning regressions in the field of transitional justice including the government's withdrawal from co-sponsoring Human Rights Council resolution 40/1 on 'promoting reconciliation, accountability and human rights in Sri Lanka'¹; the announced planned adaptation of the Office of the Missing Persons (OMP) and the Office of Reparations in line with the Government policy framework; the establishment of a Presidential Commission of Inquiry to look into 'alleged political victimization of public servants' (PCOI), which sought to halt legal proceedings in ongoing disappearance cases; the granting of pardon to former Army Sergeant [REDACTED] convicted for the murder of civilians in the "Mirusuvil massacre", and the allegations of surveillance, harassment and reprisals targeting human rights defenders and civil society actors. We regret that your Excellency's Government has not replied to this communication.

We would also like to recall joint communication AL LKA 6/2020 sent on 6 October 2020, concerning alleged police harassment and excessive use of force against demonstrators and human rights defenders during a peaceful assembly for the International Day of the Victims of Enforced Disappearances held on 30 August 2020,

¹ which built on preceding Resolutions 30/1 of October 2015 and 34/1 that provided a comprehensive transitional justice package embraced by the previous Government

in the districts of Jaffna and Batticaloa. We would be grateful to receive a reply to this communication.

According to the information received:

Slow progress, obstructions and reprisals in the investigation of serious human rights violations

Reportedly, there is a general lack of progress and regression in the investigation and prosecution of the serious human rights violations committed during the conflict. While the Criminal Investigation Department (CID), under the previous administration, had made progress in investigating and prosecuting several cases of human rights violations, enabling some indictments and arrests, the progress has stalled under the current administration.

Emblematic cases such as the murder of 27 inmates at the Welikada Prison in Colombo and the 2013 Rathupaswela killings had indictments served against two and four suspects respectively, but the cases are currently awaiting trial. Prosecutions concerning the killing of journalists that took place between 2008 and 2010 have stalled or encountered serious setbacks such as the release of suspects on bail and the withdrawing of arrests warrants against suspects.

Regarding the abduction and killing of 11 youths by Navy officers in 2008 and 2009, indictments had been served against 12 suspects. However, the Court of Appeal issued an interim injunction order on 25 June 2020 preventing the Colombo High Court Trial-at-Bar from pursuing a case against former Navy Commander Admiral Wasantha Karannagoda, who had submitted a complaint to the PCOI, an entity which, as indicated in AL LKA 1/2020, had advised the Attorney General to put on hold several cases. The case was subsequently called by the High Court Trial-at-Bar, and the Senior State Counsel appearing for the Attorney General noted that in view of the interim injunction it would be appropriate to postpone the case until a verdict is delivered with regard to the writ petition. As a result, the case was postponed until December 2020.

Accountability efforts have been further obstructed by reported reprisals - including dismissal, travel bans and arrests-, against several members of the CID involved in the investigations of a number of high-profile killings, enforced disappearances and corruption.

Obstacles to memorialization efforts and intimidation of victims and civil society

Memorialization efforts led by victims' groups have been hampered through harassment, intimidation and obstruction. In particular, on 9 July 2020 the police tried to obstruct a memorial event commemorating the victims of the 1995 Sri Lankan Air Force Bombing of the St. Peter's Church in Navaly, even after a Court had rejected the police's request for an interim order. Similarly, the police have consistently tried to obstruct protests organized by the families of the disappeared with interim orders from Magistrates and has also intimidated the organizers; most recently affecting a protest held in the North and East of Sri Lanka on International Day of the Victims on Enforced Disappearances, as indicated in AL LKA 6/2020.

Surveillance and scrutiny of civil society organizations including victim groups, women's groups working closely with affected communities and human rights defenders, have persisted, aided by the fact that the NGO Secretariat has been placed under the control of the Defense Ministry since December 2019. In particular, we received reports of questioning, intimidation, and harassment, including threats to families of the disappeared. Such developments have allegedly forced representatives of some civil society and other organizations as well as journalists to leave the country, scale back or close operations, and limit activism or association with victims and survivors.

Appointment in civilian functions of militaries accused of committing gross human rights violations

Reports indicate an increasing militarization of civilian Government functions. In particular, the new administration has continued to bring non-military agencies under the Ministry of Defense and has appointed at least 28 retired and active military officials, including persons accused of committing serious human rights violations, in senior civil administrative positions and as part of a series of "Presidential Task Forces" established in the absence of Parliament in June 2020. In particular, Lieutenant General [REDACTED], who has allegedly been involved in serious human rights violations, was appointed Commander of the Sri Lankan Army and Acting Chief of Defense Staff, as well as head of the National Operation Centre for the Prevention of the COVID-19 outbreak.

We express serious concern at the alleged setbacks and regression in the transitional justice measures that Sri Lanka had adopted, or committed to implement, to address the serious human rights violations committed during the 25-year conflict. Regressive steps such as the pardon granted to persons convicted for gross human rights violations, the obstruction of legal proceedings on emblematic human rights violations cases, and the reprisals against CID staff have raised grave concerns over the possibilities of effective accountability and redress to victims for the gross violations of human rights and international humanitarian law committed during that period.

We express further concern at the alleged restrictions imposed on memorialization efforts led by victim's groups and at the reported intimidation and harassment of victims and civil society. We would like to emphasize that victims and civil society play a crucial role in societies coming out of conflict and that a continued adversarial relation with activists, human rights defenders, women's organizations and victim groups can jeopardize any domestic initiatives for reconciliation and deprive it of any credibility. We would like to recall that such events are protected under the right to freedom of peaceful assembly.

Additionally, we express concern at the alleged appointment of retired and active military officials, including persons accused of committing serious human rights violations, in senior civil administrative positions and Presidential Task Forces.

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations to ensure the right to access to justice, truth and reparations, as guaranteed by various international human rights instruments.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information concerning the progress of investigations undertaken by the CID related to gross human rights violations.
3. Please provide information concerning the alleged reprisals against the staff of the CID.
4. Please provide further information about the presidential pardon given to [REDACTED] and how this decision complies with international standards in the field of accountability and transitional justice.
5. Please provide details regarding the appointments of senior government positions to persons accused of serious human rights violations and how this complies with international standards in the field of transitional justice, particularly regarding guarantees of non-recurrence.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Fabian Salvioli

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Tae-Ung Baik

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punishment

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to the obligation to investigate and punish gross human rights violations and to provide redress to victims. Article 2 of the Covenant on Civil and Political Rights, ratified by Sri Lanka in 1997, establishes that States must undertake measures to ensure that persons whose rights or freedoms are violated shall have an effective remedy. In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish the right of victims to receive adequate, effective and prompt reparation for the harm suffered, and to have access to relevant information on reparation mechanisms (paragraphs 10, 11 and 15). Furthermore, Article 12 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Sri Lanka acceded to on 3 January 1994, provides an obligation to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 requires State parties to prosecute suspected perpetrators of torture.

Human Rights Council resolution 12/11 on Human rights and transitional justice reaffirms the responsibility of States to prosecute perpetrators of gross violations of human rights and serious violations of international humanitarian law constituting crimes under international law, with a view to ending impunity (paragraph 7). Moreover, in its General Comment No. 31, the Human Rights Committee established that States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings, torture and other cruel, inhuman or degrading treatment, and enforced disappearances (paragraph 18). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties. Impunity for such violations can be an important element contributing to the recurrence of violations.

We would also like to refer to the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes, as established in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (principle 2). Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

Furthermore, in its *General Comment on the Right to Truth in Relation to Enforced Disappearances*, the Working Group on Enforced or Involuntary Disappearances pointed out the "existence of the right to truth as an autonomous right." This right is "both a collective and an individual right." According to this right, "[e]ach victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society as a 'vital safeguard against the recurrence of violations' (...)." The Working Group observed that the right to know the truth "is an absolute right, not subject to any limitation or derogation".

Regarding the interruption or obstruction of the prosecutions related to gross human rights violations, due to the reprisals imposed on the staff of the CID, we would like to recall that the principle 36 of the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity urges States to undertake all measures necessary to ensure the independent, impartial and effective operation of courts in accordance with international standards of due process.

Regarding the presidential pardon, we wish to recall that international law imposes limits on the use of benefits such as amnesty, pardon and commutation of sentences in respect of serious human rights violations. These measures are incompatible with the obligation to prosecute crimes under international law and deny victims the right to truth, access to justice and to request appropriate reparations. The reduction of sentences based on common criminal law principles and procedural rules ignores the special gravity of crimes against humanity. The international community recognizes the need to restrict the use of certain rules of law, such as procedural benefits, in order to combat impunity and prevent these rules from becoming an obstacle to justice (E/CN.4/Sub.2/1997/20/Rev.1). The provision of such benefits could involve hidden forms of impunity that contravene international human rights obligations.

In this regard, the updated Set of Principles reaffirms the obligation of States to take appropriate measures in respect of perpetrators of human rights violations (principle 1) and sets out restrictions on amnesties and clemency measures (principle 24). The Committee against Torture has also considered that the imposition of less severe penalties is incompatible with States' obligations. (CAT/C/34/D/212/2002 (2005), párr. 6.7)

In this regard, Human Rights Committee's General Comment 31 establishes that States may not relieve perpetrators from personal responsibility, through amnesties and prior legal immunities and indemnities. Furthermore, no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility. Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable.

In connection with the above alleged facts, we would also like to recall the findings and recommendations of the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, following his country visit to Sri Lanka contained in report A/HRC/45/45/add.1, in particular we would like to point to the recommendations contain in section D (para. 91) aimed at addressing the lack of tangible progress on criminal investigations, and include the need to adopt decisive action on emblematic cases, strengthen the current accountability system, and any future system of this kind; ensure the separation of investigative and prosecutorial functions; and preserve records documenting violations. Concerning memorialization efforts, the report recommends the Government to support such initiatives and to provide communities with space to mourn and remember victims (section E, para.94). It further urges the cease of the continued harassment and surveillance by security and intelligence personnel of human rights defenders and other social actors (section B, para. 87.b). More generally, the report urges the development a comprehensive transitional justice strategy that includes a clear timeline for the establishment of the

different transitional justice mechanisms and allows the public to engage in consultations in the development of the strategy (section A, para.86.a).

We also recall that according to Article 21 of the ICCPR, “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights).

In addition, we refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27, which clearly stated that “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (para. 89).

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 5 (c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 9, paragraph 1, which provides for the right to benefit from an effective remedy and to be protected in the event of the violation of those rights;

- and article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Moreover, we would like to draw your attention to General Assembly Resolution 68/181 which urges States to acknowledge publicly the important and legitimate role of women's rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against them. (OP7)

We would further like to draw your attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves. (OP5, 19 and 20)