

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: AL LKA 5/2021
(Please use this reference in your reply)

17 November 2021

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 45/3, 43/16 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged acts of harassment and reprisals for cooperation with the UN against human rights defender Ms. **Sandya Ekneligoda**, reportedly in retaliation for her efforts to seek the truth about the fate and whereabouts of her husband, disappeared journalist Prageeth Ekneligoda. The case of Mr. Ekneligoda was registered with the Working Group on Enforced or Involuntary Disappearances (WGEID) on 3 February 2010 and remains outstanding.

Ms. Ekneligoda was the subject of a prior communication transmitted by five Special Procedures to your Excellency's Government on 2 August 2018, regarding allegations of harassment, including online attacks against her, in reprisal for her efforts to seek the truth about the fate and whereabouts of her husband (LKA 2/2018). We regret that no reply has been received so far to this communication. The case of Ms. Ekneligoda was included in the 2019 report of the Secretary-General on cooperation with the UN, its representatives and mechanisms in the field of human rights (A/HRC/42/30 para. 75, Annex I para. 97).

According to the information received:

Since the enforced disappearance of Prageeth Ekneligoda on 24 January 2010, little progress has been made to establish the truth and achieve justice on his case.

It is reported that criminal investigations on the matter led to the indictment of 9 accused including military intelligence officers in November 2019 by the Colombo High Court Trial-at-Bar with 17 charges, notably abduction and conspiracy to murder.

On 9 January 2020, President Rajapaksa appointed a Presidential commission of inquiry to investigate allegations of "political victimization" of public officials, members of the police and the armed forces, and other employees of State corporations, by the previous Government. With its broad mandate, the Commission has looked into police investigations conducted during the

previous administration (2015-2019) and has reportedly intervened in police investigations and court proceedings with the effect of undermining the police and the judiciary in several emblematic human rights cases, including on enforced disappearances.

This Commission reportedly summoned a key witness in the case of Prageeth Ekneligoda, which was before the Permanent High Court at Bar, and despite the High Court's order holding that the witness could not be called before the Commission while the trial was ongoing as it could tamper the witness' testimony. In addition to disregarding the Court order, the Commission did not provide Ms. Ekneligoda with an opportunity to present her case despite her being an injured party and one of the main victims of the case. It is reported that, in its final report, the Commission recommended that all charges against military intelligence personnel be dropped and all indictments withdrawn. Furthermore, the Commission also reportedly recommended punishing the officers who conducted the investigation exposing the truth about Mr. Ekneligoda's enforced disappearance.

In December 2020, the retired Supreme Court judge Mr. Upali Abeyratne, former Chair of the above-mentioned Commission, was appointed as the new Chair of the Office on Missing Persons (OMP). Arguably, his appointment seriously undermined the independence and credibility of the OMP, eroding the trust of the victims' families and weakening its ability to discharge its mandate effectively.

In this respect, it is reported that Ms. Ekneligoda received a letter from the OMP dated 04 August 2021 asking her to disclose her private correspondence with the International Committee of the Red Cross (ICRC) and the WGEID. Mrs. Ekneligoda has little trust on the OMP under its new configuration, and fears that this disclosure request is an attempt of coercion, rather than a genuine attempt to make progress with her case.

In the past, Ms. Ekneligoda had suffered harassment, including online attacks, in retaliation for her efforts to seek the truth about the fate and whereabouts of her husband (see LKA 2/2018, and A/HRC/40/60/Add.1, para. 414), including from Buddhist Monk Galagoda Aththe Gnanasara Thero, leader of the group Bodu Bala Sena (BBS). Gnanasara Thero disrupted court proceedings on the early stages of the case against the army personnel suspected for the abduction of Mr. Ekneligoda. In that incident, he threatened and intimidated Ms. Ekneligoda. He was convicted for contempt of court in 2018 and sentenced to 6 years imprisonment. He was granted a controversial Presidential pardon on 23 May 2019.

On 26 October 2021, the President issued an Extraordinary Gazette Notification [appointing a 13-member Presidential Task Force](#) chaired by Galagoda Aththe Gnanasara Thero, "to make a study on the implementation of the concept of 'One Country, One Law' and prepare a draft Act for the said purpose." In addition to the above-mentioned attacks against Ms. Ekneligoda, Gnanasara Thero allegedly has a history of fueling ethnic tensions which, on

some occasions, have led to deadly mob attacks against Muslims. The appointment of such a controversial figure to lead such a task force would be yet another worrying signal of the general climate of impunity, and further undermining victims' trust.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern at the reported acts of harassment and threats that Ms. Sandya Ekneligoda has suffered in the past, and we consider that in the current climate (with one of her reported harassers appointed to a high level position and with the head of the Task Force that allegedly interfered in the court case on the disappearance of her husband now heading the OMP) it is understandable that Ms. Ekneligoda considers that the request for information from the OMP is not a genuine effort to make progress with her case but an additional act of intimidation.

If that were the case, we consider that the alleged intimidation would be in retaliation to her legitimate activities in defense of human rights in Sri Lanka, more particularly, to her claim for truth and justice regarding the case of her husband, including before the UN. We are particularly concerned at allegations that Ms. Ekneligoda has been requested to disclose her private correspondence with the WGEID, which could discourage other victims and relatives from engaging with the UN and leading to self-censorship.

We also express concern at those acts of harassment, which may also constitute violations of Ms. Ekneligoda's right to her privacy, honour and reputation. Ms. Ekneligoda, who has been seeking to clarify the fate of her husband and for the perpetrators of his disappearance to be brought to account, is entitled to the effective protection by the State against such attacks and threats that may jeopardize her life and personal security.

We would also like to take this opportunity to raise some concerns with regard to the OMP. Information indicate that, since 2020, progress has stalled and the Government intends to review the law establishing and defining the mandate of the Office. The appointment of Mr Upali Abyratne as its chairperson as well as the appointment of fellow Commissioner Mr Jayantha Wickramaratne, a former Inspector General of Police who was investigated for concealing evidence in a criminal investigation on the murder of a journalist, and who leads police units that were also tainted by allegations of involvement in disappearances, undermines the independence and credibility of the institution, eroding victims' trust in it and weakening the Office's ability to discharge its mandate effectively. We reiterate the importance of transparent, victim-centred and gender sensitive approaches, and that reparations programs must be accompanied by broader truth and justice measures. We also reiterate our call to the Government to ensure that the OMP is fully independent and effective, including by making sure that it is fully able to discharge its mandate to conduct searches and investigations, and is afforded the independence, resources and political support needed for its crucial work.

We would also like to recall the joint communications (AL LKA 1/2020 and AL LKA 7/2020) sent by a group of Special Procedures in May and November 2020, respectively, concerning alleged regressions in the field of transitional justice in Sri

Lanka. In said communications, we had already expressed concerns regarding the establishment of a Presidential Commission to inquire the ‘alleged political victimization of public servants’, which would seek to halt legal proceedings in ongoing disappearance cases, as well as worrying envisaged adaptations to the Office of the Missing Persons (OMP). We regret that your Excellency’s Government has not replied to these communications.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information about whether any investigation and judicial or other inquiry has been undertaken in relation to these allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate to what extent the decision of the Presidential Commission to Inquire into Political Victimization in relation to the case of Prageeth Ekneligoda has an impact on the criminal proceedings thereon and what steps will be taken to ensure accountability, truth and reparation for this case.
4. Please explain what measures have been taken to ensure Ms. Ekneligoda’s safety and her protection from intimidation and harassment.
5. Please indicate what measures have been taken to ensure that human rights defenders in Sri Lanka are able to carry out their legitimate work, particularly when attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, in a safe and enabling environment without fear of threats, acts of intimidation or reprisals of any kind.
6. In connection to the above, please explain why Ms. Ekneligoda has been requested to disclose her private correspondence with the WGEID and how is it compatible with Ms. Ekneligoda’s rights to privacy and safety as well as unhindered access to and communication with the UN in the field of human rights.
7. Please indicate how the OMPs appointments meet the required elements of impartiality, independence and effectivity of such a body.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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 responsible of the alleged violations.

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka ratified in 1980. In particular, article 6 paragraph 1 of the Covenant, establishes that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Also, article 9 of the ICCPR provides that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. [...]". Article 17 provides that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." And that "Everyone has the right to the protection of the law against such interference or attacks". We would like to remind that article 19 of the ICCPR guarantees the right of everyone to freedom of opinion and expression, stressing that this right can be subjected to restrictions only when they are "necessary for respect of the rights or reputations of others" and "for the protection of national security or of public order (ordre public), or of public health or morals".

In addition, article 1 of the UN Declaration on Human Rights Defenders provides that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels". Article 2 reaffirms each state's "responsibility and duty to protect, promote and implement human rights [...]". Article 5 reaffirms, in its paragraph c), the right "to communicate with non-governmental or intergovernmental organizations". Article 6 states that everyone has the right to hold and disseminate information on human rights, as well as to form opinions on their observance. Article 9 provides that everyone has a right to an effective remedy and protection in the event of human rights violation, including through the right to file a complaint, to have a public hearing before an independent, impartial and competent judicial, to get the compensation due, and to communicate with international bodies. Article 12 provides that everyone has the right to participate in peaceful activities against violations of human rights and fundamental freedoms and that the State should ensure the protection of this right.

We would like to draw your attention on General Assembly Resolution 68/181 whereby 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).

We would also like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. The Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.

We also draw your Excellency's Government's attention to the provisions of the International Convention on the Protection of All Persons from Enforced Disappearances, which Sri Lanka ratified on 25 May 2016. In particular, we make reference to article 12, which reasserts that "any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation"; the complainant, witnesses and relatives shall be protected from reprisal in the wake of the complaint; States "shall take the necessary measures to prevent and sanction acts that hinder the conduct of the investigation", and ensure it remains impartial. Article 24 reaffirms the right to know the truth regarding the circumstances of the enforced disappearance; States should take all necessary measures to protect this right, by conducting a thorough and impartial investigation and ensuring the victim obtains reparation.

We would like to also refer to United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, article 13 paragraphs 3 and 5 of the Declaration, which state that that steps shall be taken to ensure that "all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal." and that "any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished."

Furthermore, we would like to recall that the Human Rights Council, in its Resolution 7/12, paragraph 4 alinea c), urges States to "prevent the occurrence of enforced disappearances [...]"; in alinea d) to "work to eradicate the culture of impunity for the perpetrators of enforced disappearances and to elucidate cases of enforced disappearances as crucial steps in effective prevention"; in Alinea f), to "take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected".

In addition, in its resolution 13/13, paragraph 6, the Human Rights Council urges States to “take timely and effective action to prevent and protect against attacks on and threats to persons engaged in promoting and defending human rights”; in paragraph 12, it urges to “investigate, in a prompt, effective, independent and accountable manner, complaints and allegations regarding threats or human rights violations perpetrated against human rights defenders or their relatives and to initiate, when appropriate, proceedings against the perpetrators so as to ensure that impunity for such acts is eliminated”.

Also, in resolution 33/2, paragraphs 1, 3 and 4, the Human Rights Council respectively “Condemns unequivocally all attacks and violence against journalists and media workers, such as [...] enforced disappearances [...]”, “Strongly condemns the prevailing impunity for attacks and violence against journalists, and expresses grave concern that the vast majority of these crimes go unpunished, which in turn contributes to the recurrence of these crimes”, and “Urges States to do their utmost to prevent violence, threats and attacks against journalists and media workers, to ensure accountability through the conduct of impartial, prompt, thorough, independent and effective investigations into all alleged violence, threats and attacks against journalists and media workers falling within their jurisdiction, to bring perpetrators, including those who command, conspire to commit, aid and abet or cover up such crimes to justice, and to ensure that victims and their families have access to appropriate remedies”.

We would further like to recall article 2 of the International Covenant on Civil and Political Rights (ICCPR), according to which States must ensure that any person whose rights were violated has an effective remedy, and that the competent authorities enforce such remedies when granted. As established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18).

We would further 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).

In this respect, we also refer to the General comment on the right to the truth in relation to enforced disappearance, issued by the WGEID (A/HRC/16/48, (para. 39).