

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Ref.: AL LKA 3/2022
(Please use this reference in your reply)

8 November 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 45/3, 51/8, 44/5 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged enforced disappearances, arbitrary detentions, torture, and extra-judicial killings, reportedly committed by Government security forces between May 1989 and January 1990, in the Matale District, in the context of the Janatha Vimukthi Peramuna (JVP) uprising. The allegations received also refer to a complete lack of accountability and judicial action against the State authorities identified as the main perpetrators of the violations committed.**

Concerns regarding the alleged lack of progress and obstruction of legal proceedings on emblematic human rights violations cases in Sri Lanka; the regression in the transitional justice measures aimed at addressing the serious human rights violations committed in the past; as well as the intimidation and harassment of victims and human rights defenders, have been previously transmitted by the Special Procedures mandate holders to your Excellency's Government through joint communications sent on 11 May 2020 (AL LKA 1/2020), 6 October 2020 (AL LKA 6/2020), 9 November 2020 (AL LKA 7/2020), and 17 November 2021 (AL LKA 5/2021). We thank Your Excellency's Government for the reply received on 25 January 2022, concerning communication AL LKA 5/2021.

According to the information received:

Between May 1989 and January 1990, Government security forces in the Matale District allegedly carried out enforced disappearances, arbitrary and unlawful detentions, and extra-judicial killings, in the context of escalating violence between the Janatha Vimukthi Peramuna (JVP) and the Government of Sri Lanka.

It is reported that, during this period, the Government deployed [REDACTED] then commanding officer of the 1st Battalion, Gajaba Regiment, as District Military Coordinating Officer of the Matale District, where he controlled all security forces deployed in the district, including intelligence forces.

Starting in 1989, Commissions of Inquiry were set up by the Government to investigate human rights violations that had reportedly occurred during, and

subsequent to, the uprising. The Commissions received complaints alleging enforced disappearance, torture, extra-judicial killings, and arbitrary and lawful detentions that had been carried out by security forces in the Matale District. The information received points to [REDACTED] and the security forces under his control (mostly the “Gajaba Regiment”) as the main perpetrators. According to the Commissions’ reports, [REDACTED] would have known about the scale of violence in the small district of Matale, which only had a population of 350,000 at the time. The reports also claim that [REDACTED] had effective command and control over the security forces, who were responsible for the killings, arbitrary and unlawful detention, torture, and enforced disappearances reported during that period.

It is reported that four different Commissions of Inquiry investigated the enforced disappearances of persons that took place from May 1989 and January 1991. The Commissions documented 1041 cases of enforced disappearance in the Matale District, from which more than 700 cases occurred between May 1989 and January 1990. The Commissions also compiled a list of 24 alleged perpetrators of enforced disappearance in the Matale District. This list, however, was never published and was reportedly placed under a government secrecy order set up to run until 2030. The list includes [REDACTED] and army and police officers under his command. [REDACTED] reportedly had been present at various detention sites, as well as schools and guest houses known as “notorious torture sites”.

The Commissions also documented instances of arbitrary and unlawful detention and torture (including sexual torture) of detainees. Commissions’ reports noted that it was well known at the time that people were stopped and detained at checkpoints, or as part of roundups and mass arrests in villages and were abducted by officials who identified themselves as belonging to the State security services using unmarked government vehicles. Those detained and abducted included young men and boys from villages in the Matale District.

Evidence was also collected from former detainees who had survived detention in army or police custody at Vijaya College army camp and other places of detention in Matale District. Prisoners testified to being blindfolded and beaten, including while “being hung upside down”, and “being forced to inhale chilli fumes.” The Commissions documented one specific case of a victim who was arrested in September 1989 and held at Vijaya College army camp for a period of 40 days and brutally tortured while in detention.

The Commissions also collected evidence of extra-judicial killings of civilians during this period, many of whom would have been arbitrarily and unlawfully detained and taken into custody. The allegations received also refer to instances in which human remains of victims were left in fields or displayed on bridges.

It is also reported that the alleged perpetrators have not been charged or tried and have continued to hold positions in the Government. [REDACTED]

It is argued that judicial action against security officials and politicians was dissipated due to political interference, and also because of security and

military recruitment needs in the context of the conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern at the alleged enforced disappearances, arbitrary detentions, torture, and extra-judicial killings, reportedly committed by Government security forces between May 1989 and January 1990, in the Matale District, and the ensuing lack of accountability and judicial action against the alleged perpetrators of these human rights violations.

Should the facts alleged above be confirmed, they would amount to a violation of the right to life, as set forth in article 3 of the Universal Declaration of Human Rights (UDHR), and in article 6 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Sri Lanka on 11 June 1980. With regard to the alleged enforced disappearances, if confirmed, they would amount to violations of articles 6, 7, 9 and 16 of the ICCPR, read alone and in conjunction with article 2(3). These would equally amount to violations of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance and of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), which Sri Lanka ratified on 25 May 2016. If confirmed, the allegations of arbitrary deprivations of liberty would amount to a violation of the right to liberty and security of person, enshrined in article 9 of the Covenant. The abovementioned allegations also appear to be in violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established in article 5 of UDHR, article 7 of the ICCPR, and article 1 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT), acceded to by Sri Lanka on 3 Jan 1994. These allegations would also contravene the State's obligations to investigate acts of torture and ill-treatment, prosecute perpetrators and provide redress and reparation to victims, pursuant to articles 4, 5, 12 and 14 of the UNCAT.

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 about whether any investigation and judicial or other inquiry has been undertaken in relation to these allegations. In particular, please provide information on steps taken to conduct prompt, impartial, independent, thorough and effective investigations into potentially unlawful deaths in line with international standards, including the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)¹), in addition to allegations of

¹ <https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf>.

torture and ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide detailed information regarding the findings by the four Commissions of Inquiry on the enforced disappearances that took place from May 1989 and January 1990, including the 1041 documented cases in Matale District, as well as on the publication of the list of 24 alleged perpetrators. In particular, please elaborate on how the placement of such a list under a government secrecy order set up to run until 2030 would comply with your Government's international undertakings.
4. What measures, if any, have been undertaken to search for the persons disappeared between May 1989 and January 1990 in the Matale District, and to establish their fate and whereabouts.
5. Please provide the factual and legal basis for the arrests and detentions of individuals carried out in Matale District between May 1989 and January 1990 and documented by the Commissions. Please explain what measures were put into place to guarantee the fair trial and due process rights of arrested and detained individuals. Please also explain how these measures comply with Sri Lanka's obligations under international human rights law.
6. Have any measures been taken to provide reparations, including financial compensation to the victims of these alleged human rights violations? If this is not the case, please explain why.

We would appreciate receiving a response within 60 days. Past 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 measures be taken to investigate and ensure the accountability of any person(s) responsible for the alleged violations.

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

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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 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 acceded to on 11 June 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". The right to life and the right to be free from torture are non-derogable, a *jus cogens*, and a norm of international customary law, that must be respected in all circumstances. 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. [...]". In accordance with article 9 (3), anyone arrested or detained on a criminal charge shall be brought before a judge within 48 hours. Article 9(4) of the ICCPR further requires that anyone deprived of their liberty by arrest or detention be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order the individual's release if the detention is not lawful.² We would like to remind your Excellency's Government that the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention applies to all situations of deprivation of liberty, including military detentions and detention during conflicts.³ The Convention also refers to the obligation to investigate and punish gross human rights violations and to provide redress to victims. Article 2 establishes that States must adopt measures to ensure that persons whose rights or freedoms are violated have an effective remedy, and that the competent authorities enforce such remedies when granted. With regard to the alleged enforced disappearances, these would amount to violations of articles 6, 7, 9 and 16 of the ICCPR, read alone and in conjunction with article 2(3).

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).

We underline that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual

² See A/HRC/30/37.

³ A/HRC/30/37, principle 4 and guideline 1.

dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In the case of *Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2, despite uncertainty as to the exact cause of death, state authorities were held responsible for failing to take adequate measures to protect Hugo Dermit's life, as required by article 6(1) of the ICCPR.

Furthermore, in its General Comment No. 36, the Human Rights Committee notes that "investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent (...) Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations (...) An investigation into violations of the right to life should commence when appropriate *ex officio*".

General Comment No. 36 also states that extreme forms of arbitrary detention that are themselves life-threatening, in particular enforced disappearances, violate the right to personal liberty and personal security and are incompatible with the right to life. The committee further explained that the failure to respect the procedural guarantees found in article 9, paragraphs 3 and 4, designed *inter alia* to prevent disappearances, could also result in a violation of article 6 (para. 57). Furthermore, the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, in effect removes that person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. General Comment No. 36 also highlights that "enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life (...) States parties must take adequate measures to prevent the enforced disappearance of individuals and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance. States parties should also ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions and introduce prompt and effective procedures for cases of disappearance to be investigated thoroughly by independent and impartial bodies that operate, as a rule, within the ordinary criminal justice system. They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation. Under no circumstances should families of victims of enforced disappearance be obliged to declare them dead in order to be eligible for reparation. States parties should also provide families of victims of disappeared persons with means to regularize their legal status in relation to the disappeared persons after an appropriate period of time. (para. 58)" We wish to remind your Excellency's Government that, in accordance with the jurisprudence of the Working Group on arbitrary detention and General Comment No. 35, enforced disappearances constitute a particularly aggravated form of arbitrary detention.

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 further draw your Excellency’s Government’s attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We recall that the Declaration sets out the necessary protection to be ensured by States regarding all persons deprived of liberty. In particular articles 7, 10, 12, 13, 16 of the Declaration establish that no circumstances whatsoever, may be invoked to justify enforced disappearances; to ensure access to a prompt and effective judicial remedy; to ensure competent national authorities have access to all places of detention; to ensure persons deprived of liberty be held in an officially recognized place of detention, and to be brought before a judicial authority promptly and after detention; to provide accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest; to ensure maintaining of an official up-to-date registers of all detained persons in every place of detention; and authorities to suspend persons presumed responsible for such acts from any official duties during the investigation and try them only by the competent ordinary courts. Also, article 19 of the Declaration provides that victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. In the event of the death of the victim as a result of an acts of enforced disappearance, their dependents shall also be entitled to compensation.

Reference is also made to article 17 of the Declaration, which stipulates that these acts shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclarified. In article 18, the Declaration states that persons who have or are alleged to have committed an enforced disappearance shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

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 this respect, we also refer to the General comment on the right to the truth in relation to enforced disappearance, issued by the Working Group on Enforced or Involuntary Disappearances (A/HRC/16/48, (para. 39), which reiterates that “[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 has often recommended that States adopt measures to promote truth, reparations for victims and reconciliation in their societies, as a means of implementing the right to the truth and the right to integral reparation for victims of enforced disappearances (A/HRC/RES/21/15, para. 3).

We also draw the attention of your Excellency’s Government to the report of the Working Group on Enforced or Involuntary Disappearances on standard and public policies for an effective investigation of enforced disappearances, published on 7 August 2020 (A/HRC/45/13/Add. 3). The report highlights how, in addition to any criminal investigation of cases of enforced disappearances, the search activities should be pursued until it has been possible to determine with certainty the circumstances of the disappearance and the fate and whereabouts of the disappeared person or their remains. A failure to investigate would amount to a violation of the ICCPR itself.