

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

Ref.: AL LKA 6/2023  
(Please use this reference in your reply)

14 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 44/5, 45/3 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 discovery of a mass grave at Kokuthoduvai in Mullaitivu on 29 June 2023 and related concerns regarding its preservation and exhumation, respect and identification of the mortal remains contained therein in line with international standards, which are essential to uphold the right to truth of victims of gross human rights violations and their relatives, as well as of the society as a whole.**

By means of this communication, we wish to remind your Excellency's Government of the need to ensure that investigations conform with international standards of forensic best practice, including as outlined in 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 \(2016\)\*](#)) and offer technical assistance in this regard.

According to the information received:

On 29 June 2023, officials from the National Water Supply and Drainage Board discovered human skeletal remains six metres from the main Mullaitivu-Nedunkeni road in the Mullaitivu Kokkuthoduvai area while replacing water pipelines. Police forces reportedly cordoned off the area and informed the Mullaitivu Magistrate's Court of the discovery.

On 30 June 2023, proceedings<sup>1</sup> were initiated in the Mullaitivu Magistrate's Court and the magistrate ordered the excavation of the mass grave to be carried out on 6 July 2023. Present were representatives of the Police, Criminal Investigation Department, Archaeological Department, officials of the Bomb Disposal Squad of the Special Task Force, members of an organisation advocating for the rights of those forcibly disappeared during the war, the Mullaitivu Magistrate, the Judicial Officer and members of the Office on Missing Persons (OMP).

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<sup>1</sup> Case No/ AR/ 804/2023.

Two police officers are assigned to guard the mass grave area. However, concerns have been raised that skeletons could be removed or manipulated by anyone as that the state authorities have failed to adequately cordon off the entire area where the mass grave is located in accordance with international standards.

There are concerns that main agency with the mandate to search and trace the missing and forcibly disappeared persons, the OMP of Sri Lanka, is not fully independent, which could therefore compromise the independence and impartiality of the investigation into the mass grave.

After 13 bodies were found and marked during the excavations, the Magistrate decided to designate the site as a mass grave.

On 6 July 2023, the judiciary stopped the exhumations. The excavation of the mass grave is currently halted pursuant to the orders of the Mullaitivu Magistrate, but will resume soon.

The Magistrate attended a meeting on the matter at the Mullaitivu Magistrate's Court on 13 July 2023. During the meeting, the Magistrate instructed all relevant departments, including the OMP and the Judicial Medical Officer, to submit a possible budget and proposals for the exhumation. The Magistrate further ruled that international observers could be present to observe the exhumation and the site, by cordoning off the entire relevant area pursuant to international standards, and that the police should provide additional protection and guard the site. The Magistrate had set a deadline of 20 July 2023 for all entities to submit their proposals. However, as the concerned entities were unable to prepare the proposals by such deadline, the Magistrate fixed 8 August 2023 as a new deadline for submission of the proposals. Families of victims of enforced disappearance fear that the Government will delay the exhumation and that the site may not be adequately preserved due to rains in view of the upcoming monsoon season.

While we do not wish to prejudge the accuracy of the information received, we are concerned that one of the major challenges reported by the institutions involved include the lack of funds and of sufficient human and technical resources to carry out the exhumation of the mass grave at Kokuthoduvai in Mullaitivu and to preserve the human remains contained therein to ensure that the chain of custody remains intact. We take note that there is no national policy on the management of mass graves or a designated entity for the co-ordination of the preservation and exhumation of mass graves in Sri Lanka.

While we welcome the prompt action taken by your Excellency's Government following the discovery of the mass grave at Kokuthoduvai on 29 June 2023, including the convening of key stakeholders to conduct excavations, we express concern about the reported lack of sufficient human and technical resources and funding to adequately conduct exhumation and identification procedures in line with applicable international standards. The respectful and lawful handling of mass graves, including forensic examinations, is an essential prerequisite for the investigation of potentially unlawful deaths in order to prevent future violations of the right to life, to clarify the fate and

whereabouts of forcibly disappeared persons whose remains might be buried therein, to allow families to receive their loved one's remains for burial and/or dignified commemoration, and to determine the circumstances of the disappearance with a view to establishing the truth, which is owed to the families and to society as a whole. Transparent and impartial investigations and the protection of the site from outside interference are also of paramount importance to preserve the integrity of the remains, evidence and lines of enquiry.

In this regard, and as those individuals buried in the mass graves may have been subjected to arbitrary detention, disappearance, executions as well as acts of torture, we wish to bring to your Excellency's Government attention 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, 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 January 1994, and the right to liberty and security of person, enshrined in article 9 ICCPR. 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. Notably, article 24, paras. 2 and 3, of the ICPPED, require States parties to take all necessary measures to ensure the right to know of each victim of enforced disappearance, and to search for disappeared persons and, in the event of death, to locate, respect and return their remains. Furthermore, your Excellency's Government holds an obligation 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.

**We urge your Excellency's Government to properly cordon off and preserve the whole of the recently discovered mass grave at Kokuthoduvai in Mullaitivu and to immediately allocate adequate human and technical resources for the exhumation and identification of the remains, allowing also the participation of international observers.** It is further of utmost importance to keep the family members of the victims as well as relevant civil society organisations informed of any progress in the investigation and identification of the human remains and allow their presence – and that of their counsels - as observers during the excavation operations, strengthen the independence of the judiciary to punish potential perpetrators, ensure the safe storage of the skeletal remains and that the chain of custody remains intact.

We underscore the importance of conducting investigations into all suspected unlawful deaths in line with international standards, particularly the [\*Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions\*](#) and, very especially in this case, 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 \(2016\)\*](#)). The Minnesota Protocol offers detailed guidance to the highest

international standards for the recovery, analysis and documentation of human remains, as required for the investigation of potentially unlawful deaths. We reiterate that we stand ready to support your Excellency's Government efforts in this regard and remain available for any technical assistance *in situ* that the mandate on extrajudicial, summary or arbitrary executions may be able to provide to the authorities concerned.

We also refer to the [2020 Bournemouth Protocol on Mass Grave Protection and Investigation](#) and urge Your Excellency's Government to examine, without undue delay, all locations of potential mass graves and create a database to ensure their protection, in line with the measures set out in the aforementioned Protocol.

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 the measures taken or foreseen to preserve the mass grave site in Mullaitivu Kokkuthoduvai area, to adequately perform the excavations and to respect and identify the human remains buried therein in accordance with international standards, and to inform family members of the victims of any progress in the investigative process in a timely manner.
3. 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)).
4. Please provide information about the measures taken or foreseen to strengthen the forensic investigative capacity relevant for the excavation process concerning mass graves and the subsequent identification process, and to allocate adequate funds and human and technical resources for these undertakings. Please also provide any information foreseen to involve an appropriate number of anthropologists, archaeologists and forensic experts, including international observers and experts chosen and appointed by the families of forcibly disappeared persons involved in the exhumation proceedings of the mass grave site in the Mullaitivu Kokkuthoduvai area.
5. Please provide any information on the measures taken or foreseen to enact a specific law and policy on the management of mass graves, and

exhumations, which includes identification, preservation and investigation over time. Please also include information on measures to create an independent public prosecution service to ensure that prosecutions resulting from the exhumations are conducted in an independent and impartial way.

6. Please provide any information on the measures taken or foreseen by the OMP to establish a professionally skilled specialist unit to probe into the location of other possible mass graves, reinforce their forensic capacity and ensure that the unit has adequate resources, including for DNA testing.
7. Please indicate if any measures have been implemented or are foreseen to provide reparations, including financial compensation to the victims of these alleged human rights violations.

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 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.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Aua Baldé

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

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".

Given the circumstances, we would like to highlight that international human rights law norms apply at all times and in all circumstances, including during war, public emergencies, civil strife, or situations of internal disturbances or armed conflict. In particular, **the right to life** constitutes a norm of jus cogens and customary international law from which no derogation is permitted under any circumstances ([CCPR/C/GC/36](#), para. 2).

The ICCPR 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. 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.

Moreover, in its General Comment 36, the Human Rights Committee established that enforced disappearances constitute a unique and integrated series of acts and omissions representing a grave threat to life and the deprivation of liberty, followed by a refusal to acknowledge that deprivation of liberty or by concealment of the fate of the disappeared person, and that it 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. In this vein, the Committee reminds that 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 and States parties should also provide families of victims of disappeared persons with the means to regularize their legal status in relation to the disappeared persons after an appropriate period of time (paragraphs 57-58). The same

General Comment establishes that “investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent (...) and that 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*”.

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 24, which 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. The same article, in its paragraphs 2 and 3 assert that each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person and that each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

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.

We would also like to make reference 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. 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) also 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.

There is a duty to conduct thorough, prompt and impartial **investigations** of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989.

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). 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).

Additionally, the United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” It notes the authorities must conduct an investigation as soon as possible and proceed without unreasonable delays. We remind that amongst other things, investigations into alleged unlawful killings should seek to determine who was involved in the death and their individual responsibility for the death and seek to identify any failure to take reasonable measures which could have had a real prospect of preventing the death. It should also seek to identify policies and systemic failures that may have contributed to a death and identify patterns where they exist (para. 25).

We also refer to the report on Medico-legal Death Investigations (MLDIs) (A/HRC/50/34) by the Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating that the bereaved families and next of kin should be informed in

a timely and appropriate manner about the investigation into the death of their loved one, its progress and its findings and that should be protected from any threat resulting from their participation in the investigation (paras. 92 and 94). Likewise, the 2020 Bournemouth Protocol on Mass Grave Protection and Investigation also reminds that upon completion of the investigation, identification and justice processes, human remains, associated body parts and personal artefacts should be returned to family members, allowing them to dispose of the deceased in line with their belief.

Furthermore, we refer to the report on Mass graves, highlighting the multitude of sites of mass killings and unlawful deaths across history and the world ([A/75/384](#)) by the former Special rapporteur on extrajudicial, summary or arbitrary executions, establishing that “States must enable the participation of families in investigations into unlawful deaths and ensure that they obtain available information on the circumstances, events and causes of death, and the location and condition of the remains insofar as these have been determined” (paragraph 58). The adequate handling of mass graves also involves an obligation to respect religious and cultural rights (A/HRC/31/59, para. 21).

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)

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, we draw the attention of your Excellency’s Government to the report of the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, on his visit to Sri Lanka (A/HRC/45/45/Add.1), particularly to recommendation 89 (c) in which he urged the Government to enable the Office [on Missing Persons] “to strengthen its capacity on crucial skills, including forensic investigations, through training provided by national, regional and international experts.”