

Preliminary observations of the Working Group on Enforced or Involuntary Disappearances at the conclusion of its visit to Sri Lanka (9-18 November 2015)

Introduction

A delegation of the United Nations Working Group on Enforced or Involuntary Disappearances concluded a ten-day official visit to Sri Lanka. The visit took place from 9 to 18 November 2015.

The delegation was composed of the Vice-Chair of the Working Group, Mr. Bernard Duhaime, as well as Mr. Tae-Ung Baik and Mr. Ariel Dulitzky, members of the Working Group. During the visit, that took place in a historic moment and at a time of great hope and opportunity in the country, the Working Group has received information from the Government, victims, and civil society organizations on cases of enforced disappearances and studied the measures adopted by the State to prevent and eradicate enforced disappearances, including issues related to truth, justice and reparation for the victims.

At the outset, the Working Group wishes to thank the Government of Sri Lanka for extending an invitation to visit the country, and for the efforts made before and during the visit, in particular by the Ministry of Foreign Affairs, to facilitate its smooth undertaking. It welcomes the fact that virtually all meetings requested by the Working Group were accommodated and the openness and good disposition of officials. It also appreciates that many authorities have provided or promised to provide the documents requested by the Working Group.

The Working Group also wishes to thank the Office of the Resident Coordinator in Sri Lanka, the United Nations Country Team in Sri Lanka, as well as the United Nations Office of the High Commissioner for Human Rights, for their support.

During its ten-day mission, the Working Group visited all parts of the island, including Colombo, Batticaloa, Galle, Jaffna, Kilinochchi, Mannar, Matale, Mullaitivu and Trincomalee. The Working Group met with the President, the Prime Minister, the Minister of Foreign Affairs and the Minister of Prison Reforms, Rehabilitation, Resettlement and Interreligious Affairs. It also met: the Navy Commander; the Army Commander; the Chief Justice; the Attorney-General; the Inspector General of Police; the Director of the Terrorism Investigation Division; the Director of the State Intelligence Service; the Vice- Director of the Criminal Investigation Department; the Governors of the Northern Province and of the Eastern Province; the Chairman of the Rehabilitation of Persons, Properties and Industries Authority; as well as officials from the Office of National Unity and Reconciliation; the Government Analyst's Department; the Presidential Commission on Missing Persons; a group of Parliamentarians including the Speaker; and the Human Rights Commission. The Working Group also visited mass graves in Matale and Mannar and the memorial for the disappeared in Seeduwa. It also visited the Boosa Detention Center, the Navy Base in Trincomalee - including a former secret detention facility within the base – and the temporary detention facilities on the 4th and 6th floors of the CID and TID building.

The Working Group met a very high number of relatives of disappeared persons in all parts of the country and also held several meetings with representatives of all communities and sectors of civil society including NGOs, human rights defenders and lawyers. The Working Group specially wishes to thank all the relatives of disappeared persons who courageously shared their testimonies with the Working Group, many for the first time.

The invitation extended by the Government to the Working Group and its increasing openness to international engagement are very positive and encouraging steps. Today, the Sri Lankan Government has the challenge to transform its promises into a concrete, comprehensive, legitimate and participatory framework established to secure the rights to truth, justice, reparations, memory and guarantees of non-repetition for the victims, their families and Sri Lankan society as a whole, in the context of a reconciliation process. While reconciliation is extremely necessary in Sri Lanka, it cannot be achieved at the expense of the rights of the victims.

Enforced disappearances have been used in a massive and systematic way in Sri Lanka for many decades to suppress political dissent, counter terrorist activities, or in the context of the internal armed conflict. During and after the war, enforced disappearances were even used for purely economic extortion purposes by some State officials and affiliated paramilitaries. The extensive use of enforced disappearances, followed by an almost complete lack of judicial accountability and decisive and sustained efforts to secure the truth about the disappeared - including the determination of their fate or whereabouts - as well as the absence of a comprehensive reparation program and social, psychological and economic support for the relatives, have left profound wounds in society and a deep sense of mistrust among the relatives. This context of mistrust is exacerbated by the continued and extensive presence of the military in the North and East of the country. Sri Lanka has an historical opportunity to adopt urgent and profound measures to satisfy the rights to truth, justice, reparation, memory and guarantees of non-repetition of the victims as a fundamental step in laying the ground for a sincere reconciliation process.

The design and implementation of all these measures - which should be parallel and go hand in hand - call for truly inclusive, good faith consultative and participatory methods. The Working Group is aware that past Sri Lankan efforts have suffered from a lack of such consultation. Consultation with and participation of those affected by the violations is essential not only to secure legitimacy and support from those most directly affected and to be benefited from these measures, but also because truth, justice and reparation processes depend, to a large extent, on the willingness of victims and others to participate. Consultations will also contribute to overcome the mistrust of the families. Another important step to build trust will be reducing the military presence in the North and East of the country, as soon as possible.

The success of any process requires also that victims, relatives, witnesses, and civil society organizations can operate freely and without any type of threats and harassment. Regrettably, the Working Group received detailed and credible allegations of intimidatory tactics, threats, sexual abuse and other forms of coercion or vigilance from some security and investigatory officers, particularly from officials believed to be from the Criminal Investigation Department (CID). It also received allegations according to which some of the persons with whom it met have been questioned in relation to the visit of the Working Group. These acts are absolutely unacceptable in a democratic society. The highest levels of the Government should take decisive actions to stop such acts and instruct all public officers that these actions

will not be tolerated and will be punished accordingly. The Working Group calls on the State to guarantee the safety of those with whom it met, and to protect them against any form of reprisals, threat or intimidation. The success of any measures on truth and justice will depend on how safe the victims and relatives feel.

Over the years, the Working Group has transmitted more than 12000 cases to the Government of Sri Lanka, of which 5750 are still outstanding. A very high number of cases before the Working Group concern disappearances occurred in the late 1980s and early 1990s in relation to the violent targeting of Sinhalese youth suspected of links to the Janatha Vimukti Peramuna (JVP).

Another very considerable number relates to the disappearance of Tamils throughout the very long armed conflict between government forces and the Liberation Tigers of Tamil Eelam (LTTE) which ended in May 2009. In addition to these waves of widespread and systematic enforced disappearances, there are also other types of disappearances, such as the so-called “white-van” disappearances, disappearances in the context of anti-terrorism operations or disappearances conducted for ransom/economic extortion purposes, or a combination of all three. The number of cases before the Working Group is the second highest in the database of the Working Group worldwide. Nevertheless, it unfortunately represents the tip of the iceberg of the dimension of enforced disappearance in Sri Lanka, as also demonstrated by the abundant documentation collected by the different public inquiries and commissions established over the years.

The Working Group welcomes that in the last few years, the Government of Sri Lanka has taken seriously its engagement with the Working Group. A specific inter-governmental task force has been created for the purpose of examining the cases before the Working Group and respond thereon, and the Working Group is indeed receiving a very high number of State replies concerning the outstanding cases. The Working Group also noted that, recently, the responses are more precise and substantive in comparison with previous ones which were somewhat standard, fairly repetitive and, in the great majority of cases, manifestly insufficient to clarify the cases. The Working Group hopes that this trend will continue and lead to the possibility of clarifying a high number of cases in the future. The full implementation of the truth seeking measures being discussed will contribute to this process as well. The objective of the Working Group is not to keep the cases open, but to clarify them, in other words, to confirm the fate or whereabouts of the persons who disappeared to the satisfaction of families.

A high number of abductions have also been carried out by LTTE. The Working Group has also met with families of missing and abducted soldiers. These acts are of a serious nature and tantamount to enforced disappearances, and should therefore be adequately investigated and sanctioned in accordance with international standards. The victims and relatives of those who disappeared in the hands of the LTTE should equally have their rights protected and restored.

This is the fourth time that the Working Group visited Sri Lanka. It visited the country in 1991, 1992 and 1999. Today the Group is confident to see a different country with great potential for the full and effective implementation of the provisions of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance to prevent and eradicate enforced disappearances in the country.

The Working Group firmly believes that all the victims of enforced disappearances regardless of the period in which they disappeared have the same rights. Any comprehensive response to enforced disappearances should cover all the victims of enforced disappearances over the years without any type of discrimination. The initiatives must track violations wherever and whenever they occurred and independently of the identity or affiliation of the victims. While the mandate of the Working Group is limited to enforced disappearances carried out by State agents or private actors acting with the tolerance, acquiescence or cooperation of the State, the State should adopt all the necessary measures to secure the rights of the victims in cases involving non-state armed groups like the LTTE, regardless of the identity of perpetrator of a disappearance.

During the visit the Working Group met with hundreds of relatives of the disappeared throughout the country, hearing many tragic and deeply saddening stories. The Working Group wants to clearly express its solidarity with the victims of enforced disappearance and their families.

While nowadays enforced disappearances are no longer being carried out on a massive and systematic scale, cases of enforced disappearances were reported in Sri Lanka until recent years. Very important and urgent challenges therefore remain to prevent their recurrence: Enforced disappearance is not introduced yet in the legislation as an autonomous crime; there are very few cases of judicial accountability; the vast majority of those who are responsible for the thousands of disappearances that have occurred have not yet being properly investigated, prosecuted, tried and punished; the fate and whereabouts of tens of thousands of persons is still unknown; and the families of those disappeared persons often continue to suffer harassment, they lack proper psychosocial support and have not been able to receive a dignified response from the State.

The Working Group welcomes with satisfaction the current Government's express public statements signaling that it is willing to address the extraordinary problem that disappearances represent in Sri Lanka. The same commitment was reiterated during many of the meetings that the Working Group held, including by the highest authorities of the country, in line with the position adopted by Sri Lanka at the last session of the Human Rights Council. This acknowledgement in itself is significant and is a very positive departure from the past. Now it is time for the Government to translate that announced commitment into concrete and urgent specific measures to address disappearances. The time for promises is over. The time for action has come. Good faith measures and concrete results are needed to restore trust between the State and all sectors of society as well as between all groups and communities. It is the Working Group's hope that its visit and the preliminary observations and recommendations that it presents will serve to accelerate this process and ensure their success in the long run. The Working Group is ready to support the Sri Lankan Government and society in this enterprise.

Legislation

The Working Group welcomes the Government's commitment to ratify the International Convention on the Protection of All Persons from Enforced Disappearances "without delay". The Working Group encourages the Government to ratify the Convention immediately without reservations and with the express recognition of the competence of the Committee on Enforced Disappearances according to articles 31 and 32 of the Convention.

As to avoid any interpretation problem with the legal domestic status of the Convention, the ratification should be accompanied by immediate implementing legislation. The Working Group recommends that a separate, comprehensive and integral enforced disappearance legislation be enacted to implement the Convention as well as the Declaration. The legislation should also make clear that enforced disappearance is a continuous crime to which amnesties, immunities or statute of limitations cannot be applied, notably in the context of crimes against humanity. Given the context in which enforced disappearances took place, Sri Lanka should also ratify the Additional Protocols to the Geneva Convention, and the Rome Statute of the International Criminal Court to ensure that such practices and other violations of international human rights and humanitarian law are not repeated.

The Working Group notes that the criminal code in Sri Lanka does not include an autonomous crime of enforced disappearances nor a recognition of enforced disappearance as a crime against humanity. Sri Lanka should swiftly make enforced disappearance a separate offence consistent with the definition given in the Declaration and punishable by appropriate penalties that take into account its extreme seriousness. The legislation should also cover the various modes of criminal liability, including in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance. It should also expressly provide for the application of command or superior individual criminal responsibility for such crime.

The Working Group received extensive information about the Prevention of Terrorism Act (PTA) and how a number of its provisions can facilitate the occurrence of enforced disappearance, in particular its sections 7 and 9, notably for allowing long periods of deprivation of liberty without judicial review. According to article 10 (2) of the Declaration, accurate information on the detention of disappeared persons and their place or places of detention, including transfers, “*shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned*”. As such, strict and effective regulation and limitation of the use of administrative detention or deprivation of liberty without immediate and proper judicial oversight is an essential preventive measure to avoid enforced disappearances. In addition, the access to lawyers under the PTA is limited and subject to the approval of the Chief of the Terrorism Investigation Division (TID), which is in clear violation of the rights of the accused. In fact, the few persons who are still in detention in Boosa under section 9 (1) of the PTA have reportedly never been allowed to see their lawyers in the center for many years. The Working Group considers that the PTA should be immediately repealed and replaced by legislation in conformity with Sri Lanka’s international obligations.

Article 10 (1) of the Declaration also provides that “*Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention*”. Secret detention is totally unacceptable.

The Working Group visited the Navy Base in Trincomalee and the underground cells used in the past to secretly detain people. It also met with the CID officers who are investigating the case of 11 individuals who were abducted in Colombo in 2008 and brought to Trincomalee. The Working Group is grateful to both the Navy Commander and the CID Director for providing access to the Navy Base and the cells. The Working Group looks forward to

receiving updates on the results on the investigation of this case, and recommends a thorough and independent investigation into all alleged instances of secret detention.

Truth

The families of the disappeared in Sri Lanka have waited too long to know the truth about the fate or whereabouts of their loved ones. This is an absolute right under the Declaration and an obligation that the Sri Lankan State should meet in accordance with international law. The Working Group, in its general comment on the right to the truth in relation to enforced disappearance, stated that the right to the truth “*means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearance, and the identity of the perpetrator(s)*” (A/HRC/16/48, para. 39).

The Government should adopt immediately a comprehensive policy to search for all of those who disappeared. Those involved in the process of search should not be involved in any way in past disappearances. The investigation should be conducted by a new body with total independence.

The Working Group received with great interest the proposal to create an Office on Missing Persons as the State institution that will be charged with this obligation. The Working Group had received information from the Government that the International Committee of the Red Cross (ICRC) is providing technical expertise in this area. At the outset the Working Group emphasizes the need of a policy that will address the widespread conviction of hundreds of families that a proper truth seeking process will allow the return of their loved ones who remain disappeared. If the outcome of a serious, legitimate and sincere truth-seeking process is different than what expected by the families, the Government and the society will need to provide those families with all the needed support.

The Working Group supports the idea of a State institution dedicated to the humanitarian task of searching for the thousands of disappeared in the country. While the details of such an institution are yet to be defined, the Working Group recommends that any such institution should clearly be the result of an ample consultation process with the victims, victims’ associations and other civil society organizations and represent a true State rather than a Government policy, representing the whole society. At a minimum, the institution should be highly technical, professional, non-discriminatory, impartial and independent. In particular, the institution should adopt a victim-centred approach, so as to respond to the needs of the victims searching for their loved ones. A victim-centred institution should be fully accessible to the families of disappeared persons. This includes having procedures that are readily understandable, all documents should be in Sinhala, Tamil and English and all the procedures conducted in the three languages. Such an institution should be accessible for all, without discrimination and irrespective of one’s geographic location. It also requires that interpreters are properly trained. Finally, a victim-centred institution should have procedures and professionals able to provide psychosocial assistance to the relatives in all the stages of the search.

The Working Group observed the profound mistrust among victims towards many initiatives related to enforced disappearances. Given this mistrust - and in addition to the effective and ample consultation process - international involvement in the State institution charged with searching for the victims of disappearances should be seriously considered both in terms of

the composition of the institution, as well as to the technical and professional support. The State institution should have all the material, financial and human resources necessary to carry out the enormous responsibilities that it will have.

An institution charged with the search for the disappeared should have the capacity to *sub poena* information from any source and witnesses, to enter any State institution, and have free access to any State archive. It should also have the technical capacity to conduct exhumations, including forensic expertise.

The Working Group welcomes the proposal by the Government to establish a commission for truth, justice, reconciliation and non-recurrence. The Working Group considers that such commission could play an important role if it overcomes all the shortcomings of the previous truth seeking initiatives. The Commission should be composed of independent and professional personnel after a full and thorough vetting process. A significant part of the membership should come from the civil society. The Working Group recommends the Government start a comprehensive consultative process with all the involved stakeholders and seek international assistance in the design, establishment, functioning and follow up of the truth commission.

Based on those shortcomings of previous commissions of inquiry, the proposed truth commission should be the result of an ample consultative process. It should be composed by persons of the highest moral authority and with extensive human rights experience. The composition should reflect the diversity of the country and of the victims affected by the grave human rights abuses. It should be granted proper human and financial resources as well as ample powers to properly investigate, including the power to summon current and former officials.

Since 1991, there have been at least 11 Presidential Commissions of Inquiry and two additional investigative mechanisms specifically mandated to inquire into large-scale disappearances, two Presidential Commissions of Inquiry mandated to inquire into other matters, including disappearances, and two departmental units created to address disappearances. Most of them were criticized for their lack of independence and transparency, and their recommendations, when made publicly available, were never followed up in a systematic manner. While some of these commissions were able to identify alleged perpetrators, this was rarely followed by criminal investigations and convictions of those responsible. However, even if most of these mechanisms established to address issues related to the disappeared did not provide meaningful responses to clarify the fate or whereabouts of the disappeared, they have collected a vast source of documentation and evidence, which – to date - has not been formally assessed in its totality. This task should be a priority for the new State institution charged with the search of those who disappeared. That information should serve as a starting point for finding out the fate or whereabouts of the persons who disappeared and to start and/or continue investigation and prosecution. Additionally, any such compilation of information will need to ensure avoiding the revictimization of the families by not requesting them to repeat again and again the same testimony provided to previous Commissions. Further, to date, the majority of the reports of such Commissions have not been published in their entirety, have large portions of withheld material, and part of the material that was published is no longer available with regard to certain Commissions. These past reports should be all made public and easily accessible.

The Working Group met with the Presidential Commission to Investigate Complaints Regarding Missing Persons created on 15 August 2013. Its original mandate was to investigate the cases of “persons resident in the Northern and Eastern Provinces during the period 10 June 1990 to 19 May 2009, who have been abducted or have disappeared from their places of residence”. The period covered was later extended back to 1983. The report of this Commission was recently published. Many of the stakeholders met have expressed a number of concerns about the work of the Commission, in relation to the independence, impartiality and effectiveness of the inquiry. This confirms the concerns expressed by the Working Group in a general allegation adopted during the 102nd session in February 2014 in relation to the functioning and activities of the Presidential Commission.

The expansion of the mandate of the Commission in July 2014 to include investigations into broader violations related to the conflict, and particularly focused on LTTE abuses, raised strong concerns among civil society organizations and family members of disappeared persons that this detracted from the Commission’s ability to deliver on its primary responsibility: to assist families of the disappeared. In September the Commission presented its Report, which - as repeated to the Working Group by several relatives of the disappeared and civil society organizations - did not satisfy the expectations of the victims.

There is uncertainty on the current status of the Commission as there have been some declarations from high Government officials that it would suspend its activities as it did not meet the expectations of victims. However, it seems that the investigation team is continuing to work, including by contacting relatives of the disappeared. This extension of the mandate and activities of the Commission beyond the publication of its reports creates confusion and generates doubts in relation to the Government proposal to create an Office on Missing Persons. The Working Group recommends transferring the cases of the Presidential Commission on Missing Persons to a credible and independent institution developed in close consultation with families of the disappeared.

The Working Group emphasizes that access and meticulous preservation of all archives is essential to secure the rights to truth and justice. Sri Lanka should develop a comprehensive plan for a system to preserve all existing records and documentation relating to human rights violations, including enforced disappearances. Access to archives, including those of military, security and intelligence services, should be guaranteed to families for the purpose of the search of their loved ones.

The Working Group had the opportunity to visit mass graves in Mannar and Matale, as well as the newly set up DNA laboratory in the Government’s Analyst’s Department. These visits demonstrated evident problems in the way the mass grave sites have been secured and the samples and evidence handled. There is a critical need to improve the forensic capacity of all those involved in the exhumation and identification of bodies as well as on the ensuing criminal investigation. It is also essential to ensure the proper preservation of sites.

The Government should be proactive in the identification of mass graves, and therefore the establishment of a professionally skilled special unit to probe the locations of other possible mass graves should be considered.

As a comprehensive State policy for the search of the disappeared would likely allow the discovery of new graves, Sri Lanka should reinforce the forensic capacity of the judiciary and ensure that it is adequately resourced, including for DNA testing, forensic anthropology and

archaeology. The Working Group is concerned that the DNA laboratory may not have the capacity to deal with the increasing workload, as it is already working at its maximum capacity. Furthermore, the independence of such entities from security and police forces should be ensured.

Justice

The Declaration requires that the State guarantees to victims of enforced disappearance an effective remedy that includes a thorough and impartial ex officio investigation with a view to identifying those allegedly responsible for the disappearance and imposing the appropriate penalties.

The Working Group received information on only a few cases related to enforced disappearances on which investigation and prosecution have been initiated. However, for the vast majority of cases, the Working Group has observed the most absolute impunity. The Working Group has reiterated in many occasions that impunity for enforced disappearances is a source for new violations in the future. The State should take decisive actions in this regard. The Working Group believes that overcoming the pattern of structural impunity will require strong leadership, political will and concerted efforts.

There has been much discussion about the creation of the proper judicial mechanism in charge of dealing with serious human rights violations, crimes against humanity and war crimes, including enforced disappearances. The recommendation put forward by the United Nations High Commissioner for Human Rights, which the Working Group supports, that Sri Lanka should draw on the lessons learnt and good practices of other countries that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators, should be considered by the Government with particular attention. Any decision on the forthcoming judicial mechanism should give confidence to all Sri Lankans, in particular the victims, in relation to the independence and impartiality of the process as well as its full respect for international human rights law, international humanitarian law and international criminal law. The Working Group received innumerable testimonies of families expressing their strong mistrust in the administration of justice in Sri Lanka.

The Working Group would like to underline some non-exhaustive elements with respect to the investigation, prosecution and adjudication of enforced disappearances that need to be secured in the forthcoming judicial mechanism.

In the first place, the investigation should be done from the beginning by a highly professional and specialized team of prosecutors. As enforced disappearances and other crimes against humanity can never be dealt by military jurisdiction, no role or intervention should be given to the armed forces in the investigation, prosecution and trial of these crimes. As for the Truth Commission, a vetting process should be put in place for all judicial and other officials of the envisaged mechanism.

The Working Group considers that prosecuting and trying only few emblematic cases will not be sufficient to comply with Sri Lanka's international obligations nor to satisfy the expectations of the victims and important sectors of society. Thus, all cases of enforced disappearances should be prosecuted and that will require equipping prosecutors and courts with the capacity to handle such high demand. All prosecutions should investigate the material and intellectual authors of such crimes, including through the application of the

principle of command responsibility.

The envisaged judicial mechanism should also have the expertise, capacity and credibility to investigate systematic human rights violations and have - and be perceived to have - the necessary functional and structural independence and impartiality.

The success of Sri Lanka's judicial efforts will require incentives for witnesses to be willing to testify. The Working Group received reports recounting how persons with crucial information refuse to testify due to fear. It was also informed about instances of harassment against witnesses as explained further below. Sri Lanka should review the Victim and Witness Protection Act in order to incorporate better safeguards for the independence and effectiveness of the witness protection programme in line with international standards. Additionally, the Government should ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police personnel assigned to this program are fully vetted. Finally, the witness protection system should receive adequate resources.

The Working Group is extremely concerned that several relatives and organizations have been harassed and intimidated in different ways due to their involvement in cases of enforced disappearances. The Working Group was informed that many relatives are constantly visited by intelligence officers, police officers or Army personnel. Most of the allegations received by the Working Group, point directly to CID officers. In many of those visits relatives are questioned about their activities and the meetings they attend. Civil society organizations supporting the relatives in their search for truth and justice have also been subjected to open threats and intimidation or pressure discouraging them to pursue their quest. In a democratic society these types of harassment and control are absolutely impermissible, they constitute an additional human rights violation, and could be considered as covering-up the disappearance and should be severely sanctioned. The Working Group urges that these types of activities cease immediately and that the highest authorities in the country make a clear statement affirming the legitimacy of the activities of relatives and their associations, and about the State's obligation to ensure the right of relatives to seek truth, justice, reparation and guarantees of non-repetition. According to the Declaration, States shall take measures 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; as well as take measures to ensure 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" (articles 13(3) and (5) of the Declaration). The Government must order an end to all surveillance, harassment and reprisals against human rights defenders and relatives of persons who disappeared.

In some cases, police or intelligence officers may have visited relatives to genuinely inquire about the case of their loved ones. However, many times, police or intelligence officers simply ask the same basic questions that relatives have already provided several times. In those situations, the Working Group is concerned about the re-traumatization effect of such repetitive inquiries and the fact that it seems that those responsible for the investigations rely in most of the cases on the information provided by the relatives rather than assuming such investigations as a State obligation. The Working Group is extremely concerned about detailed allegations that alleged CID personnel would have engaged in several instances of sexual harassment and violence against mothers or wives of disappeared persons, including in exchange of promised information on their relatives' cases. This should cease immediately and those responsible should be punished.

The Working Group is also concerned at consistent allegations that in many instances relatives are asked by individuals for money in exchange for promises that their loved one would reappear, which almost never happens.

The Working Group received extensive information on application of the writ of habeas corpus in Sri Lanka. According to the information received, habeas corpus has not been as effective as it could. In the few cases that habeas corpus proceedings moved forward, those writs took an unreasonable period of time. The effectiveness of the writ of habeas corpus in cases of enforced disappearances is dependent on its speediness. The first hours or days following a disappearance are essential to the protection of the victim and the potential success of the habeas corpus. It is of special concern for the Working Group that magistrates appear to act in most habeas corpus proceedings in a very passive manner limiting themselves to request written information. The Working Group recommends that magistrates assume a proactive role in habeas corpus proceedings in order to adopt and carry out all the effective measures necessary to protect a person allegedly disappeared and secure his or her appearance. In this respect, legislation should be adopted to grant more powers to magistrates to ensure effectiveness of habeas corpus.

The Working Group welcomes the appointment of new Commissioners of the Human Rights Commission of Sri Lanka and recommends the Government to ensure the allocation of adequate human and financial resources to effectively carry out its mandate.

Reparations

All victims of enforced disappearances and their relatives have the right to full reparation, which includes compensation, satisfaction, restitution, rehabilitation and guarantees of non-repetition, as provided for in article 19 of the Declaration.

The Working Group was able to observe and received extensive testimonies related to extremely difficult economic situation that many relatives of those who disappeared suffer. Particularly, the Working Group saw first-hand how mothers and wives were left in many occasion in a desperate economic hardship without any type of State support. The Working Group recommends that the Government develops with urgency a national reparations policy, considering the specific needs of women and children, and make adequate provision from the State budget.

In a case of disappearance the victim is not only the person who disappears but also any other person, particularly next of kin who suffers as a consequence of the disappearance. The Government should adopt and strengthen existing programmes of psychosocial support for victims.

According to the information received, relatives of persons who disappeared can receive a compensation of up to 100,000 Sri Lankan Rupees upon the presentation of a death certificate. These provisions are included in legislation dating back to 1988, and the amounts have not been updated since 2009. In contrast, relatives of civil servants who died, receive up to 200,000 rupees. The Working Group was also informed that relatives of disappeared persons who were alleged to have ties with terrorist organizations do not have the right to this compensation.

According to Sri Lanka's international obligations every victim of enforced disappearance should receive full and integral reparations without any type of discrimination. The Working

Group was also informed of budgetary limitations of the Rehabilitation of Persons, Properties and Industries Authority (REPPIA), creating a large backlog. If resources are not increased it would take at least 5 to 6 years to compensate the current applicants.

Regrettably, the Working Group received information in relation to the practice of authorities to impose death certificates in exchange for compensation while not really establishing the fate or whereabouts of the disappeared. This has often been done under duress. In this respect, the Working Group emphasizes the need for legislation clearly indicating that the acceptance of a death certificate where a person continues to be disappeared is not a bar to seeking justice or truth. Thus, in conformity with the General Comment on article 19 of the Declaration (right to compensation), it is essential that no victim of enforced disappearance shall be presumed dead over the objections of the family. The Working Group therefore welcomes the recent adoption of a policy regarding the issuance of certificates of absence instead of death certificates.

The Working Group is additionally concerned that in many instances the death certificates were sent to the families without their express request and at the information it received that multiple death certificates do not properly reflect the disappearance of the person or the alleged author of the disappearance. In addition the Working Group recommends that reparation measures should be accessible and applicable to families who accepted the issuance of death certificates under duress or without full and informed consent due to fear for their security or to economic hardship. In particular, the Government should create a certificate of absence due to enforced disappearance and it should allow all the interested families to change the previous death certificate for the new certificate of absence due to enforced disappearance.

The Working Group met with hundreds of women, mothers, wives, sisters, daughters of those who disappeared. Those women shared their stories of suffering, economic hardship, despair that they faced due to the disappearance of their loved ones. Some of them have several members of their family disappeared. Many of them also explained the violence, particular sexual violence, to which they were subjected due to their plight for truth and justice. These women suffer multiple and intersecting forms of discrimination and violence, including due to harmful traditional practices in their communities.

Children, as in virtually all situations of massive human rights violations, have also paid the highest price. Many have lost one or both parents. The Working Group in its General Comment on Children and Enforced Disappearances explained how enforced disappearances affect children's rights in a different way than adults. The Working Group also heard tragic stories of parents being disappeared together with their children.

The Working Group recommends that any policy that is adopted in the area of reparation, truth and justice takes a gender and a child-rights perspective. In particular, the Working Group recommends the Government to follow the standards developed in its General Comments on children and enforced disappearances and women affected by enforced disappearances.

Among the measures in the context of resettlement, the Working Group encourages the authorities to take into account the link between displacement and disappearances. Many relatives of the disappeared are also suffering from displacement and are therefore suffering a further victimization. Similar attention should be paid to the restitution of land for the families

of those who disappeared that were displaced. In this respect, the Working Group welcomes the commitment to give priority to families of missing persons in the housing program of the Ministry.

Particular attention should be paid to adequate, professional and victim-oriented psychosocial assistance for the relatives for both truth and justice processes in the context of the forthcoming transitional justice mechanisms.

The Working Group also stresses the importance of State-sponsored memorials as well as the State's support for civil society remembrance initiatives, including their proper maintenance.

Conclusion

During the visit the Working Group perceived a sense of enormous hope. There is a real opportunity for lasting change and reconciliation to be achieved if the Government fulfills its promises to squarely face and address the past.

The Working Group welcomes the substantive information provided by various Government authorities, civil society organizations, relatives and victims with the aim of ensuring a better understanding of the phenomenon of enforced disappearances.

It is encouraging that the Government is proposing a comprehensive public policy to deal with the different aspects of prevention, investigations, penalties and reparation for the victims of enforced disappearances.

The victims of enforced disappearances have overall no faith in the justice system, prosecution services, the police or Armed Forces. The chronic pattern of impunity still exists in cases of enforced disappearance and sufficient efforts now need to be made to determine the fate or whereabouts of persons who have disappeared, to punish those responsible and to guarantee the right to the truth and reparation.

Thus, any successful initiative must be the result of a broad, inclusive, gendered, and participatory consultative process. Any comprehensive policy should address all the enforced disappearances that took place in the country regardless of the time of the disappearance and without any type of discrimination. The Government will need to adopt bold steps to reach out to and create confidence in the victims.

The Working Group reiterates its willingness to continue its constructive dialogue with the Sri Lankan authorities and offers its unreserved support for the full implementation of the Declaration.

The Working Group reaffirms its solidarity with the victims of enforced disappearance and their relatives. Their continued suffering is living proof that enforced disappearance is a continuous offence and a permanent violation of their human rights until the fate or whereabouts of the victim is clarified. The Working Group acknowledges the work done by many human rights defenders, civil society organizations, lawyers and all those who work indefatigably, including in adverse conditions, to eradicate this terrible practice.

- See more at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16771&LangID=E#sthash.NyKVu7rK.dpuf>