

General allegation

127th session (9-13 May 2022)

Sri Lanka

The Working Group received information concerning alleged violations and obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, ‘the Declaration’) in Sri Lanka.

1. According to the sources, in the last months of 2021 and the first trimester of 2022, relatives of disappeared persons have increasingly been subjected to harassment and intimidation, including through threatening phone calls at night, surveillance and unannounced visits by public officials and law enforcement officers.
2. Pursuant to the information received by the Working Group, the notorious repressive technique of the so-called ‘white van arrests’, widely used by State forces during the armed conflict (1983–2009) to target opponents and dissidents, has seemingly been used anew in a few occasions in the first months of 2022. In this context, the Working Group was informed of at least two incidents in different areas of the country (i.e. Kalmunai and Kalutara) where unidentified men claiming to be affiliated to State agencies approached in a white van two persons known to be involved in protests and political activities, in one case threatening and arresting the person concerned and, in the other, attempting to kidnap the person. Reportedly, none of the incidents was subjected to a thorough, independent and impartial investigation.
3. According to the information provided by the sources, associations of families of disappeared persons have also been experiencing interferences in their attempts to gather, mark anniversaries (including the International Day of the Victims of Enforced Disappearance) or to protest, including efforts to pre-emptively forbid their demonstrations through court orders – often under the pretext of COVID-19 restrictions – and taking photographs during their assemblies or using force against protestors. These incidents have been reported especially in the northern provinces of the country. Moreover, sources informed the Working Group about obstacles encountered in legally registering associations of relatives of disappeared persons and the corresponding implications on their ability to exercise their right to form and participate freely in organisations.
4. The sources further indicate that, over the past months, relatives of disappeared persons also faced an increasing number of obstacles in their quest for truth, justice and redress. On the one hand, the process of appointing the members of the Office of Missing Persons (hereinafter, ‘OMP’) has been reportedly lacking in transparency, undermining the trust of relatives of disappeared persons in the independence and impartiality of this institution, and seemingly impairing its regular functioning.¹ Furthermore, the Government has allegedly suspended – without any apparent justification – the payment of a monthly allowance as interim relief to families of disappeared persons.

¹ The Working Group recalls the concerns already expressed in this regard, as well as the corresponding recommendations. See, among others, A/HRC/51/Add.2, para. 79; A/HRC/42/40/Add.1, para. 7; and joint allegations with other Special Procedures LKA 1/2020, 6/2020, 7/2020 and 5/2021.

5. Moreover, pursuant to the information submitted by the sources, also the issuing of certificates of absence due to enforced disappearance with the purpose to regulate the legal situation of disappeared persons has ceased, while relatives are increasingly subjected to pressure to declare their loved ones dead. Allegedly, the fact that a disappeared person is declared dead negatively affects the continuation of criminal investigations and search activities.
6. The Working Group was also informed that the few ongoing proceedings against persons accused of having committed gross human rights violations, including enforced disappearances, are stalling. In particular, where those accused are members of the military, they complained of having been 'politically targeted'. This has triggered the intervention of the Presidential Commission of Inquiry into 'political victimization' (established in 2020), which usually resulted in the recommendation that all the suspects in the ongoing proceedings should be acquitted and, instead of being subjected to any sanction, rewarded for their service. In these cases, according to the information received, the Presidential Commission of Inquiry recommended instead disciplinary action and/or the prosecution of the police officers who had conducted the investigation, lawyers and magistrates involved in the trials, under charges including 'fabricating evidence' or 'corruption'.

The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

Article 2

- 1. No State shall practice, permit or tolerate enforced disappearances.*
- 2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 13

- 1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.*
- 2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*
- 3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.*
- 4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.*

5. Steps shall be taken 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.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

1. Please provide any additional information and/or any comment you may have on the above-mentioned allegations.
2. Please inform on the actions taken to prevent any instance of harassment, intimidation or reprisal against relatives of disappeared persons and their representatives and, where such incidents are reported, to ensure that they are promptly subjected to a thorough, impartial, independent investigation and those responsible are appropriately punished.
3. Please inform on any investigations undertaken into arrests or attempts of kidnapping allegedly committed in the first trimester of 2022 by groups of men approaching their targets in white vans and identifying themselves as State agents.
4. Please provide information on the measures taken by your Excellency's Government to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance. In particular, please specify how the Government ensures the full respect of the rights to freedom of movement, expression, and association as well as the right of peaceful assembly in the context of gatherings, commemorations and protests organised by relatives of disappeared persons. Moreover, please clarify what is the applicable legal framework and the process to legally register an association of relatives of disappeared persons.
5. Please provide information on the process of selection of the members of the OMP and the current situation – in terms of human, technical and financial resources – of the institution, as

well as the measures taken to ensure that it continues carrying out its mandate in an independent, impartial and effective manner.

6. Please, provide information on how your Excellency's Government ensures the right of victims and their relatives to an effective remedy, which should at minimum guarantee cessation of violations, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
7. Please inform on the reasons for suspending the payment of monthly allowances as interim relief to relatives of disappeared persons and whether there is any prospect of resuming such a payment in the near future.
8. Please provide information on why the issuing of certificates of absence due to enforced disappearance would have ceased and kindly illustrate what are the legal effects of declaring dead a disappeared person with regard to search activities and ongoing criminal investigations.
9. Please inform on how your Excellency's Government ensures that persons who have or are alleged to have committed an enforced disappearance do not benefit from any measures that might have the effect of exempting them from any criminal proceedings or sanction.
10. Please inform on the measures taken to ensure that persons participating in the investigation and prosecution of cases of enforced disappearance are protected against ill-treatment and any form of intimidation, including through threatening to subject them to criminal proceedings for their involvement in the investigations.

The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days.