

Sri Lanka

Standard procedure

136. The Working Group transmitted 17 cases to the Government of Sri Lanka.

137. The first case concerned Mr. **Thivagaren Arumugam**, allegedly last seen in March 2009 in Mullivaikal (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka, which was under government control.

138. The second case concerned Mr. **Athiththan Balakrishnan**, allegedly last seen on 26 June 2008 at Sirattikulam, Mannar, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for his alleged disappearance.

139. The third case concerned Mr. **Ratnam Ketheeswaran**, allegedly last seen on 18 May 2009 in the army-controlled area of Vadduvan, Mullaitivu District, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for his alleged disappearance.

140. The fourth case concerned Mr. **Ketheeswaran Makenthiran**, allegedly last seen on 16 April 2009 in Mullivaikal (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka, which was under government control.

141. The fifth case concerned Mr. **Kandaih Mathyvathanakumar**, allegedly last seen on 18 May 2009 in Vattuvagal (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka, when he allegedly surrendered to the Sri Lankan Army.

142. The sixth case concerned Ms. **Karthika Muneeshwaran**, allegedly last seen in April 2009 at the Omanthai military check point, Vavuniya District, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for her alleged disappearance.

143. The seventh case concerned Mr. **Manokumar Murugesu**, allegedly last seen on 10 May 2009 in Mullivaikal (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka, which was under government control.

144. The eighth case concerned Mr. **Nirojan Naventhiran**, allegedly last seen on 21 March 2009 in Mullivaikal (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka, which was under government control.

145. The ninth case concerned Mr. **Mayooran Pannerchelvam**, allegedly last seen on 15 January 2009 in the army-controlled area in Mannakulam, Mullaitivu District, Northern Province, Sri Lanka, when he reportedly surrendered to the Sri Lanka Army.

146. The tenth case concerned Ms. **Kanthimathy Rangasamy**, allegedly last seen on 21 March 2009 in Mathalan, Mullaitivu District, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for her alleged disappearance.

147. The eleventh case concerned Mr. **Sinnathurai Ratheeswaran**, allegedly last seen on 20 April 2009 in Puthumathalan (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka. According to the information received, he may have been taken by the Sri Lankan Army.

148. The twelfth case concerned Ms. **Tharshika Ravichchanthiran**, allegedly last seen on 4 March 2009 at Erattai Vaikkal, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for her alleged disappearance.

149. The thirteenth case concerned Ms. **Sathasivam Sathanthini**, allegedly last seen on 10 May 2009 in Mullaitivu District, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for her alleged disappearance.

150. The fourteenth case concerned Mr. **Pakeerathan Seevaratnam**, allegedly last seen on 15 May 2009 in Vattuvagal (a “no-fire zone”), Mullaitivu District, Northern Province, Sri Lanka, which was under government control.

151. The fifteenth case concerned Mr. **Iyampillai Shivapalan**, allegedly last seen on 16 May 2009 in the army-controlled area of Vattuvan, Mullaitivu District, Northern Province, Sri Lanka.

152. The sixteenth case concerned Mr. **Sujeewaraj Thangavel**, allegedly last seen on 12 February 2009 at Kombavil, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for his alleged disappearance.

153. The seventeenth case concerned Mr. **Vijayakanthan Tharmakulasingam**, allegedly last seen in February 2009 at Vaddakkachchi, Kilinochi District, Northern Province, Sri Lanka. According to the information received, the Sri Lankan Army may be responsible for his alleged disappearance.

Prompt intervention letter

154. On 10 February 2014, the Working Group transmitted, jointly with four other special procedure mechanisms, a prompt intervention letter concerning the alleged acts of intimidation and reprisals, including death threats against Messrs. **Selvakumar Krishnapillai**, **Sanjewa Sampath Jayawardena Mudyanse** and **Jude Besil Sosai Anthirai** and Ms. **Sanja Sandanadas**, human rights defenders working with the National Fisheries Solidarity Movement, including, in some instances, working in connection with the visit of the United Nations High Commissioner for Human Rights to Sri Lanka in August 2013.

155. On 20 March 2014, the Working Group transmitted, jointly with five other special procedure mechanisms, a prompt intervention letter concerning the situation of Ms. **Balendran Jayakumari**, a human rights activist working on the issue of enforced disappearances in Sri Lanka, and her 13-year-old daughter, Mr. **Ruki Fernando**, a former staff member of the Asian Forum for Human Rights and Development and prominent local human rights defender who has focused on issues pertaining to the situation of defenders in the country, freedom of expression, enforced disappearance, land-grabbing and forcible displacement, and Mr. **Praveen Omi**, former Director of the Centre for Peace and Reconciliation, who works on the protection of defenders and conflict resolution and humanitarian relief for internally displaced persons.

Information from the Government

156. On 24 and 27 December 2013 and 14 February 2014, the Government of Sri Lanka transmitted communications regarding 478 outstanding cases. On the basis of the information provided by the Government, the Working Group decided, at its 103rd session, to apply the six-month rule to one case. With regard to the remaining cases, the information provided was considered insufficient to lead to the clarification of the cases.

157. On 1 March 2014, the Government of Sri Lanka transmitted a reply to the general allegation letter sent on 14 February 2014 regarding the problems encountered by the Presidential Commission on Disappearances that was set up to cover disappearances in the Northern and Eastern Provinces of Sri Lanka between 1990 and 2009 (see A/HRC/WGEID/102/1, paras. 127–138). In its reply, the Government indicated that:

The Commission on Disappearances was appointed on 12.8.2013 for a fixed term of six months, ... The Commission ... had requested for an extension to its mandate and has been granted a further six months until August 12, 2014 ... It is not correct that only a select number was invited to appear before the Commission ... Each and every complainant is granted the opportunity to be heard ... as and when public hearings are held ... The Commission's mandate to investigate allegations of disappearances that took place in the Northern and Eastern Provinces is due to the fact that such allegations are in greater number in these provinces ... The few cases ... in other provinces can be more speedily addressed through the normal course of law ... The Commission has conducted an extensive publicity campaign and provides details on a regular basis on how and when complaints can be submitted to the Commission ... All documentation is available in Tamil, Sinhala and English ... However, a number of people ... did not come with a written representation ... The complaints were temporarily recorded in English language forms by Tamil speaking officers, but the complaints will be furnished with Tamil language forms ... The Commission does not adopt any selection criteria to invite persons before the Commission ... Persons are called ... in order that the information in their complaints is translated into English, analyzed and entered into a computerized database. The Commission had received nearly 16,000 complaints, of which approximately 6000 information forms have been translated ... All Commission hearings are open to public ... The Commission does not accept that there has been any inaccurate interpretation of service ... The Commission denies that there had been any instances where interpreters had engaged in arguing with the complainants or exhibited excessive aggression ... The Commission does not accept that questioning was consistently on LTTE where it was not warranted ... No military or security forces personnel were involved in undertaking Commission's work ... The Attorney General does not play a specific role in the proceedings. Officers who are nominated by the Attorney General do not represent the Attorney General but work as Counsel Assisting the Commission ... A mechanism can be formulated to receive outstanding cases from the UN Working Group, if they fall within the scope of the Commission.

Information from sources

158. A source provided information on one outstanding case.

Clarification

159. On the basis of information provided by the Government, the Working Group decided to clarify one outstanding case following the expiration of the period prescribed by the six-month rule.

Duplication

160. On the basis of information provided by the Government, Working Group also decided to consider one case as a duplicate of an existing case. The duplicate was subsequently expunged from the Working Group's records.

Observations

161. The Working Group thanks the Government for its response to the general allegation sent on the process and methodology of the Presidential Commission on Enforced Disappearances and hopes that the challenges identified are addressed in a way that secures the right to truth and justice.

162. The Working Group appreciates the replies on a great number of cases from the Government of Sri Lanka and hopes that a visit can help to clarify and determine the fate and whereabouts of the subjects of the 5,733 cases before it.

163. The Working Group notes with concern that it has transmitted two prompt intervention letters during the reporting period concerning the alleged intimidation of and reprisals against human rights defenders who work on the issue of enforced disappearance. The Working Group recalls paragraph 3 of article 13 of the Declaration, which provides that “steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal”.

Syrian Arab Republic

Urgent action

164. On 21 March 2014, the Working Group, following its urgent action procedure, transmitted one case to the Government of the Syrian Arab Republic, concerning Ms. **Maryam Haid**, allegedly arrested on 18 January 2014 by members of the Syrian criminal security forces in Damascus.

Standard procedure

165. The Working Group transmitted 10 cases to the Government of the Syrian Arab Republic.

166. The first eight cases concerned Mr. **Abdul Rahman Yasin**, Ms. **Rania Al Abbasi**, and their six children, all under the age of 18, allegedly last seen in December 2013 at the Military Intelligence’s Branch 215 in Damascus.

167. The other two cases concerned Messrs. **Fadi** and **Osama Doko**, allegedly arrested on 25 August 2012 by officers of the Air Force security forces at their residence in Daraya, Damascus governorate.

Information from the Government

168. On 31 March 2014, the Government of the Syrian Arab Republic transmitted a communication regarding nine outstanding cases. The information provided was considered insufficient to lead to the clarification of the cases.

169. On 31 March 2014, the Government of the Syrian Arab Republic transmitted a reply to a joint urgent appeal sent on 22 January 2014, concerning allegations of the arbitrary detention and disappearance of Mr. **Akram Raslan**. In its reply, the Government indicated that Mr. Raslan “was arrested for publishing cartoons offending the state’s prestige and he is still under investigation by the competent authority”.

Information from sources

170. A source provided information on four outstanding cases.

Press release

171. On 20 March 2014, the Working Group issued a press release calling for action by the highest United Nations bodies to tackle disappearances in the Syrian Arab Republic. Relying on the findings of the independent international commission of inquiry on the Syrian Arab Republic, the Working Group observed that enforced disappearances were being perpetrated as a systematic and widespread attack on civilians, and thus qualified as a

Annex

[English only]

Response from the Government of Sri Lanka to the general allegation from the Working Group on Enforced or Involuntary Disappearances on the implementation of the Presidential Commission on Disappearances

(1) Whether the facts reported in the allegation are accurate. If not, what are the true facts?

Responses to the facts contained in the allegation are stated below from (a) to (p):

- (a) *Para 3: Duration of the Commission is far too short to undertake a comprehensive inquiry as demonstrated by the fact that hearings of the Commission began 5 months after its establishment, and only a select number has been invited to appear before the Commission.*

The Commission on Disappearances was appointed on 12.08.2013 for a term of six months to conduct inquiries and investigations as necessary, and to submit a report containing its findings and recommendations. As a general practice, Presidential Commissions of Inquiry are mandated for a period of three or six months to complete its work, but this period has been extended whenever a request was made to the President by the Commission. In the present instance too, the Commission on Disappearances had requested for an extension to its mandate and has been granted a further six months until August 12, 2014 in order for it to undertake a comprehensive inquiry and to complete its work.

The hearings of the Commission commenced in January 2014, following two extensions granted to the public to make submissions (i.e. deadline on 31.10.2013 extended to 30.11.2013 and 31.12.2013). The extensions were granted, both to accommodate the large number of complaints received on a daily basis, and in response to a request made by persons in the North and East.

It is not correct that only a select number was invited to appear before the Commission. Complainants are invited to public hearings once the information in their complaints are processed, entered into a computerized database and analysed by the Commission staff. Subsequent to this process, each and every complainant is granted the opportunity to be heard by the Commission as and when public hearings are held.

- (b) *Para 4: Commission will only cover disappearances in Northern & Eastern Provinces between 1990-2009, and disappearances in other parts of the country will not fall within its scope:*

The Commission's mandate to investigate allegations of disappearances that took place in the Northern and Eastern Provinces is due to the fact that such allegations are in greater number in these provinces, and therefore, the normal procedure of law cannot be expected to address these matters within a reasonable period of time. The few cases of persons alleged to be missing in other provinces can be more speedily addressed through the normal course of law.

The Commission has, however, accepted complaints that are outside its geographical mandate, and will take special interest in referring such matters to the Attorney General for further action, and concurrently take steps to monitor the action taken.

- (c) *Para 5: Inadequate public information campaign resulting in many people not hearing about the Commission or being provided information on where, when and how to submit complaints:*

The Commission had, and continues to provide wide publicity on how a person or an organization can submit their complaints to the Commission. This has been done through Public Notices published in all local newspapers in Northern and Eastern Provinces and in all national newspapers in all three languages. The Notices calling for complaints, and the extension of the deadline, were published in newspapers during October, November and December, 2013. Further, six news conferences were held with major media organizations, and individual press interviews were granted to six prominent media organizations by the Chairman of the Commission during the past 06 months highlighting the scope and nature of the Commission's activities and how the Commission intends to proceed with its work. The Secretary to the Commission also held comprehensive briefings with key personnel in the district and divisional administration in Northern and Eastern Provinces, including all District Secretaries, Divisional Secretaries and Grama Niladharis, on the procedures for submission of complaints and public hearings.

It is testimony to the effectiveness of the publicity campaign conducted by the Commission that a considerable number of persons who had not submitted their complaints on time came before the public hearings in Jaffna and Kilinochchi districts to make representations. Although the deadline for submission of complaints had lapsed, the Commission, on humane grounds, had decided not to consider the adherence to the deadline as a mandatory requirement, and undertook to register all such complainants as "new registrations". These complainants too are to be heard by the Commission, and they will be notified to appear at the next round of inquiry.

- (d) *Para 5: Confusion amongst families of disappeared about how to submit a complaint, who will appear before the Commission, when and where there will be held.*

The Notices published by the Commission in the newspapers provided details of how to submit a complaint. Procedures with regard to the preparation and submission of complaints have also been comprehensively explained by the Commission to staff of District Secretariats, Divisional Secretariats and Grama Niladharis to be conveyed to the public. Every complaint is acknowledged by letter and a reference number is issued to the complainant if he or she wishes to make a further inquiry into the status of the complaint. Dates and venues of public hearings are informed well in advance to the public through notices displayed in public places in the relevant Grama Niladhari Divisions, Divisional Secretariats, District Secretariats and in the media. Persons who submitted complaints are informed of public hearings by letter or by telephone, if available.

- (e) *Para 5: Military and plain-clothed security people have been registering people.*

Registration of complainants is carried out by staff of the Commission and local staff of the District Secretariat. At no point have any military or plain clothed security personnel been involved in registering complainants, or carrying out any work undertaken by the Commission.

- (f) *Para 5: People asked to sign forms in English which they could not read or understand.*

During public hearings in Kilinochchi and Jaffna, inquiries were to be held into complaints sent by post in response to Notices published. However, a number of people who called

over at these hearings did not come with a written representation or communication. The Commission, without turning them away, adopted a procedure to ensure their grievances are also addressed effectively. Commission officials interviewed them, obtained necessary information and filled up the working document of the Commission called a “data capture form”. Due to limited staff resources, the complaints were temporarily recorded in English language forms by Tamil speaking officers, but the complainants will be furnished with Tamil language forms before they are called to appear before the Commission for a hearing.

- (g) *Para 5: Very few people who submitted complaints received letters to appear before the Commission, and the criteria for selection is unclear and not publicly available.*

Persons are called before the Commission for a hearing in the order that the information in their complaints is translated into English, analysed and entered into a computerized database. The Commission had received nearly 16,000 complaints, of which approximately 6,000 information forms have been translated and computerized to date. With regard to these completed 6,000 entries, the Commission has scheduled them on the basis of District and Grama Niladhari Division to inquire into when the Commission visits such areas. The balance complaints are being processed and the complainants will be informed by letter in due course to appear before the Commission.

The Commission does not adopt any selection criteria to invite persons before the Commission other than the process mentioned above.

- (h) *Para 6: In order to be a credible process, the Commission must hear all those who have complained, and not take a sampling of cases, regardless of time required to register and hear all complaints.*

The Commission is mandated to inquire into each and every complaint in detail, hence it does not subject itself to a time limit to complete the inquiries. The Commission is confident that any extension of time period in order to complete its work in a comprehensive manner will be granted upon request.

- (i) *Para 7: Some of the Commission’s hearings are held in public and others were closed.*

All Commission hearings are open to public and the public has always been facilitated full access to hearings. On no occasion had hearings been held behind closed doors, although if a complainant requests to give evidence in camera, the Commission provides facilities to do so. On one occasion when space was constrained in the venue where hearings were scheduled, the Commission had to conduct its hearings in a cubicle, which was enclosed by clear glass panes. Even on this occasion, public and journalists were accommodated within the confined space and proceedings were relayed outside the cubicle via speakers, thus ensuring transparency in the process.

- (j) *Para 8: Inadequate number of Interpreters and inaccurate interpretation*

Experienced interpreters who had previously served in the Parliament of Sri Lanka and in several Commissions of Inquiry, including the Lessons Learnt and Reconciliation Commission, have been employed by the Commission. The Commission finds that they fulfill the Commission’s requirements, both in terms of numbers and in the quality of service.

The Commission does not accept that there has been any inaccurate interpretation or reporting.

- (k) *Para 8: Interpreters argued with people’s accounts of what had occurred and exhibited excessive aggression when engaging complainants.*

Complainants have to be heard in a methodical manner for purposes of accuracy for assessment of complaint. At the first instance, the Commission records the submission by questioning, and thereafter requests the complainant to speak openly. Complainants are also widely questioned on the missing person's dependents, their livelihood and source of income for purposes of reparation. The entire proceedings are tape recorded by the Commission for subsequent scrutiny. The Commission denies that there had been any instances where interpreters had engaged in arguing with the complainants or exhibited excessive aggression.

- (l) *Para 8: Focus of questioning was consistently on LTTE, resulting in inadequate attention to other aspects of testimony.*

The nature of allegations of disappearances and the perpetrators involved vary from complaint to complaint and according to geographical areas. Questions are asked in a methodical manner solely to arrive at an accurate assessment of the complaints. The Commission does not accept that questioning was consistently on LTTE where it was not warranted. The hearings are also tape recorded.

- (m) *Para 8: Some officials tasked with gathering information and completing the forms of complainants did not speak Tamil, and the forms were in English.*

Fifteen Tamil speaking officers were provided by each District Secretariat to gather information and to complete the forms of complainants. During public hearings, the Commission had to face a situation where new complainants came in large numbers to make representations. As the Commission had to proceed with pre-arranged hearings of registered complainants, it adopted temporary measures to register new complainants so that their representations will be inquired into at a later date. In such instances, the registrations were recorded in English language forms. However, the Commission will be providing each newly registered complainant a form in Tamil language to fill and return prior to being invited for public hearings.

- (n) *Para 9: There should be a comprehensive publicity campaign in advance of scheduled hearings. Provincial and National level disseminations need to be carried out.*

Please see (c) above.

- (o) *Para 9: Process should be established to prepare families to appear before the Commission, including providing information on documentation to be submitted with their complaints.*

The relevant information is contained in the letters sent to all complainants inviting them to be present at the hearings. In addition, Grama Niladharis and officials at the Divisional and District Secretariats are knowledgeable about the requirements in this process, and are at the disposal of the public to obtain any assistance in this regard.

- (p) *Para 11: Military and Security personnel should not be involved in publicity campaign, registration, signing of forms, escorting people to and from hearings, taking photographs outside the Commission as people enter, or be present while people were presenting testimonies.*

No military or security forces personnel were involved in undertaking Commission work, including carrying out public information campaigns, registration, signing of forms, or been present while people were presenting testimonies to the Commission. The Commission has also not received any complaints that military personnel were escorting people to and from hearings or taking photographs outside the Commission as people enter. Photographs had been taken by independent media organisations.

The only instance when the services of a Police Officer was retained was to coordinate air transport logistics when the Commission members had to travel by air to the North.

(2) Why is the Commission's mandate so short, and geographically limited?

Please see (a) and (b) above.

(3) How can the Commission ensure that all complainants, in all parts of the country, can participate in this process? Are there plans to extend the time period and geographical work of this Commission?

The Commission has conducted an extensive publicity campaign and provides details on a regular basis on how and when complaints can be submitted to the Commission.

The Commission has requested, and has been granted an extension to its mandate by a further six months until August 12, 2014. Further extensions may be requested if needed in order for the Commission to comprehensively complete its work.

(4) What is the role of the military and security forces as well as the Attorney General's office in the Commission's work, and specially the hearings?

Commission has not engaged the services of any military or security forces personnel, and they are not involved in the Commission's work.

As a practice in all Commissions of Inquiries, assistance is sought from the Attorney General to nominate officers to assist their work. The Attorney General does not play a specific role in the proceedings. Officers who are nominated by the Attorney General do not represent the Attorney General but work as Counsel Assisting the Commission. Therefore, no conflict of interest arises when steps are taken to initiate prosecutions by the Attorney General against errant 'Police Officers' based on the findings / recommendations of the Commissions. In the case of a conflict of interest arising from an officer of the Attorney General's Department assisting the Commission, immediate action would be taken to remedy such situations so that the confidence in the Commission will not be undermined.

(5) Why are military and security officials involved in the collection of witness statements when they seem to affect the participation of complainants?

Commission denies that military or security forces personnel are involved in any of the Commission's work, including the collection of witness statements as claimed.

(6) Are there means to allow complainants to interact with the Commission without security force involvement and presence at the hearings? Is there any witness protection mechanism?

There has been no security forces personnel involvement in the Commission's work at any stage, and none has been present at any of the hearings. The complainants interact with the Commission at their own free will, and no complaint has been received by the Commission to the contrary effect.

(7) Why are the Commission and its documents in English and not in Tamil and other languages?

All documentation is available in Tamil, Sinhala and English. The Commission follows the government's official language policy in all its work.

(8) What are the measures taken to ensure access to the Commission by non-English speakers?

Tamil speaking officers from the District Secretariats in the Northern and Eastern provinces have been appointed to facilitate access to the Commission by Tamil speaking or non-English speaking complainants, and also by those who are not able to make written submissions to the Commission.

(9) Why is the information campaign about the Commission so limited and what is being done to disseminate the information more widely?

Information campaign about the Commission's work has been, and continues to be conducted extensively. Please also see (c) above.

(10) Is there any mechanism to ensure that the Commission's findings are applied to the outstanding cases from the UN Working Group?

Such matter has not been brought before the Commission to consider and make a decision. A mechanism can be formulated to receive outstanding cases from the UN Working Group, if they fall within the scope of the Commission.

(11) In the wake of the Commission's findings, will there be further investigations and prosecutions of all cases presented to the Commission?

Yes.

(12) Why is the reparation process linked to the Commission? Should not there be two separate processes?

Ensuring this task to another agency will further complicate the process. The Commission, having had the opportunity to hear and analyse the grievance of a victim, will be in a better position to make suitable recommendations. In addition, the aim of the Government is to put in place a credible and acceptable mechanism addressing the genuine grievances of a victim in an efficient and effective manner.

(13) Why are only some of the hearings held in public?

All hearings are held in public. Please see (i) above.

(14) Will the recommendations from previous Commissions of Inquiry, that are relevant to this Commission's mandate, be considered by this Commission and in the follow up work to the Commission?

If the recommendations are found to be relevant, the Commission will consider them in its work.