

democratic and human rights and fundamental freedoms of the people in the areas under its control;

7. Urges the government of Sri Lanka and other parties to the conflict to seek a cessation of hostilities with a view to achieving a political solution to the conflict through negotiations among all concerned parties and to obtain the assistance of the Secretary General of the United Nations in any mediation that may become necessary.

8. Requests the Chairman, after consultation with the Bureau, to appoint an individual of international standing in the field of human rights as Special Rapporteur of the Commission whose mandate will be to make a thorough study of the violations of human rights in Sri Lanka, based on all information the Special Rapporteur may deem relevant, including information provided by intergovernmental and non-governmental organisations and any comments and material provided by the Government of Sri Lanka, and submit an interim report thereon to the General Assembly at its forty-seventh session and a report to the Commission at its forty-ninth session.

9. Calls upon the Government of Sri Lanka to afford all necessary assistance to the Special Rapporteur of the

Commission;

10. Decides to continue its consideration of the situation of human rights in Sri Lanka under the present agenda item at its forty-ninth session.

NOTES

1. Sri Lanka: A Mounting Tragedy of Errors by Paul Sieghart, International Commission of Jurists, 1984.

2. Amnesty International, May 1989.

3. US Country Reports, February 1990.

4. Amnesty International Report 1990.

5. Ibid.

6. Ibid.

7. "Divayina", a Sinhalese language daily, Colombo, 8 March 1990.

8. Amnesty International Report 1990.

9. Amnesty International Report, September 1991.

10. Ibid.

11. Ibid.

12. Amnesty International Report, October 1991.

13. Amnesty International Report, September 1991.

14. Impeachment motion against President Premadasa submitted by opposition MPs and some former Ministers in his cabinet.

15. Asia Watch, 12 March 1991.

16. Amnesty International, September 1991.

17. Asia Watch, 12 March 1991.

18. Amnesty International, September 1991.

19. World Council of Churches Pastoral Team Visit, November 1990.

20. Amnesty International, September 1991.

21 - 36. Ibid.

37. Asia Watch, 12 March 1991.

38. Amnesty International, September 1991.

39. Bulletin, Article 19, November 1991.

40. Asia Watch, 12 March 1991.

41. US Committee for Refugees, October 1991.

42. Ibid.

43. Amnesty international, September 1991.

44. Asia Watch, 12 March 1991.

45. Presidential Commission on NGOs by Dr. Stephen Neff, International Commission of Jurists, November 1991.

46. Ibid.

47. Three Tamil militant groups: Eelam Peoples Democratic Party (EPDP); Peoples Liberation Organisation of Tamil Eelam (PLOTE); and Tamil Eelam Liberation Organisation (TELO).

48. Amnesty International, September 1991.

49. Ibid.

COMMISSION ON HUMAN RIGHTS

Summary of a Report of the UN Working Group on Enforced or Involuntary Disappearances on a visit (7 - 18 October 1991) to Sri Lanka prepared by Centre for Human Rights and Research, London

1. INTRODUCTION

(a) Three members of the Working Group, Mr. Agha Hilaly, Mr. Jonas Foli and Mr. Toine van Dongen, visited Sri Lanka from 7 to 17 October 1991 following an invitation of the government conveyed in its note verbale dated 15 November 1990.

(b) The members of the mission met the President of Sri Lanka, Ministers of

Foreign Affairs, Justice and Home Affairs, Secretary of Defence, Presidential Advisor on International Relations, Attorney General, Chief Justice and other judges of the Supreme Court, numerous parliamentarians of various parties, President of the Presidential Task Force and the Officials' Committee on Human Rights, Secretary and members of the Presidential Commission of Inquiry into Involuntary Removal of Persons,

Director of the National Intelligence Bureau, senior officials of the Executive including the armed forces and the police in Colombo and Batticaloa district and local government officials. The Working Group received full and valuable cooperation from the government, both in the preparations for and during the visit.

(c) The Report comprises five chapters:

Chapter I: Examines the context of

violence throughout Sri Lanka in which disappearances have occurred.

Chapter II: Examines the legal and institutional framework relevant to disappearances, both theoretical terms and in terms of practical application.

Chapter III: Describes and evaluates the main elements of the practice of disappearances with reference to specific cases.

Chapter IV: Discusses positions taken by NGOs and the circumstances in which they work.

Chapter V: Describes the positions taken by government officials.

Chapter VI: Contains conclusions and recommendations.

2. CONTEXT OF VIOLENCE

The situation of disappearances in Sri Lanka can only be properly evaluated when seen in the context of the violence that has prevailed in various parts of the country since the 1950s. Violence in Sri Lanka has been of three types: communal or ethnic violence, political violence (including terrorism), and violence by security forces. The first major outbreak of communal violence between the Sinhalese and Tamils occurred in 1958 with hundreds of deaths, particularly among Tamils. Similar and increasingly vehement clashes took place in 1977, 1981 and particularly in 1983 (paras 7 and 15).

During 1983 to June 1987, the conflict and violence in Sri Lanka was due to armed attacks by Tamil separatist groups against security forces and military operations by government forces in the North-East. From October 1987 to December 1989, the fighting in the North-East was primarily between the LTTE and the IPKF and its allied Tamil armed groups. From the latter part of 1987, South of Sri Lanka was affected by a campaign of violence by the JVP and counter-insurgency military operations by the security forces. From June 1990, there has been a resumption of intense fighting between government forces and the LTTE in the North-East. In the years after 1987, therefore, Sri Lanka remained caught up in a war on two fronts, ethnic conflict in the north, and political confrontation between the JVP and the armed forces in the south (Para 20, 23, 24, 25, 28, 29, 30).

Of the estimated 16 million inhabitants, the Sinhalese comprise the majority with 74 per cent, the Tamils 18 percent and the Muslims (Moors) 7 per cent. The Sinhalese speak the Sinhala language and the Tamils and the majority of the Muslims speak the Tamil language. In terms of religious affiliation, 70 per cent are Buddhists, 15 per cent are Hindus, 8 per cent follow

Islam and 7 per cent Christianity (mostly Roman Catholic). Buddhism is specifically favoured under the country's Constitution (Para 8).

During the past several decades, ethnic divisiveness and tensions have developed affecting ethnic relations among the Sinhalese, Tamil and Muslim communities. While the majority Sinhalese community perceives itself as a vulnerable minority in the context of the 50 million Tamils in Tamil Nadu in neighbouring India, the Tamil minority have increasingly felt marginalised in more recent decades in regard to rights relating to language, jobs, access to higher education, allocation of national resources and the government sponsored settlement of Sinhalese in traditional Tamil areas. Tamil-Muslim tensions have been exacerbated in more recent years particularly in the East of the island (Para 12 to 14).

In 1956 Sinhala was made the only official language of Sri Lanka replacing English. At that time a well-known parliamentarian warned: "Two languages, one nation; one language, two nations". Twenty years later in 1976 the Tamil United Liberation Front (TULF) adopted a historically significant resolution calling for a separate Tamil state of Eelam. Although the TULF set out to achieve its objective through democratic means, by 1978 political and terrorist violence erupted through the recently formed Liberation Tigers of Tamil Eelam (LTTE). Armed opposition to the government developed further as other Tamil separatist groups were formed in the following years. The 1978 Constitution proscribed any form of advocacy of a separate state and in 1983 an amendment to the Constitution banned any political party advocating secession, a move directed at TULF (Paras 16 - 17).

By 1983, the armed campaign for an independent Tamil state comprising the North and North-East of Sri Lanka had become persistent as Tamil militants escalated their armed fight. Following the killing of 13 soldiers in Jaffna in July of that year, widespread internecine strife between Sinhalese nationalists in urban areas followed in which extremists elements among Sinhalese began to attack the Tamil population in an effort to drive them away, by means of violence, from the South. The government did not appear to take effective measures to protect the Tamils or their property. Displaced Tamils in the South were sent to the North. In the years that followed Tamil separatist violence claimed numerous victims both among the civilian populations and the security forces, and began to break down the regional infrastructure (Para 18-19).

Human Rights Violations 1983-1987

In the period 1983 - 1987, reports of human rights violations were received, including disappearances, arbitrary arrests, torture and arbitrary executions in the North-East. The Working group transmitted a total of 861 cases to the government in regard to those years. During 1984, a large proportion of the cases were said to have taken place in the Northern Vavuniya district. From 1985 onwards, an increasing number was reported from the Eastern province. Violations were generally attributed to government forces, particularly to the Special Task Force (STF), a well trained police commando unit (Para 20).

Indo-Sri Lanka Agreement

In July 1987 Sri Lanka and India signed the Indo-Sri Lanka Agreement with a view to taking concerted political and military action and putting an end to the conflict. Following the agreement the India Peace Keeping Force (IPKF) arrived in the island and became responsible for disarming the Tamil militants and for maintaining law and order in the North-East. Following the outbreak of armed conflict between the IPKF and the LTTE, the IPKF and several of the armed Tamil groups allied to the IPKF allegedly became jointly responsible for many human rights violations including detentions without charges or trial, torture and extra-judicial executions. Even though disappearances as such were not a persistent pattern of abuse throughout the IPKF stay, the Working Group recorded 42 cases - the victims were members and sympathisers of the LTTE, which had initially supported the agreement, but later withdrew that support and began to fight the IPKF (Para 21).

In April 1989, the President undertook negotiations with the LTTE, resulting in a mutual ceasefire, while the LTTE continued fighting the IPKF. It was even alleged that the Sri Lankan government actually supplied arms to the LTTE in order to expedite the withdrawal of the IPKF. In September 1989, the Indian government agreed to pull out its troops and eventually the troops completed the pullout in March 1990 (Para 22).

In the armed conflict between 1987 and 1990, an estimated 10,000 civilians died in the North and North-East, most of the deaths being attributed to civilians being caught in crossfire, to bombings of cities and towns, to collective and reprisal killings attributed to both IPKF and LTTE, as well as to reprisal killings perpetrated by the latter against rival separatist groups (Para 23).

JVP campaign of violence

Amidst extreme Sinhalese nationalist sentiments, reportedly brought on by the presence of foreign troops, the Peoples Liberation Front (JVP) which had remained underground from 1983, re-emerged to launch a violent revolt against the State (Para 24). The JVP, and its military wing, the Patriotic People's Front (DJV), launched a campaign of murder in early 1988, intended to annihilate those described as "traitors to the motherland" and "enemies of the nation". Particularly targeted for punishment by death by JVP cadres were the members and activists of the ruling United National Party (UNP) and of leftist parties, and government employees. In 1988 alone, the government held JVP accountable for over 700 politically motivated killings (Para 26).

Both the JVP and the security forces resorted to the use of extreme violence in this contest for state power (Para 26). Both sides adopted a tactic of "exemplary killing" as means of instilling terror in the civilian population. Mutilated bodies at roadsides or in market places were a regular sight in many parts of the south in the years 1988 and 1989. Hundreds of bodies were seen burning on tyres or washed up on the shore (Para 27).

In mid-1988 the Government launched a strong counter-offensive by arresting and killing JVP rebels (Para 27). An important new feature in combating the JVP uprising was the proliferation of death squads whose main task was to kill suspected rebels and sympathizers. These squads operated in plain clothes and moved about freely in unmarked vehicles, passing roadblocks unhindered, and engaged in fearsome forms of exemplary killings. After resumption of fighting in the North-East, similar death squads (paramilitary and vigilante units) have begun to operate engaging in the same sort of fearsome exemplary killings. Such groups are widely believed to consist of members of the security forces, but this is denied by the government (Para 31).

The conflict in the South took a particularly violent turn after July 1989 when the JVP appeared to make a final thrust towards capturing state power with widespread enforced work stoppages, intimidation and assassination. For the first time, the JVP started attacking and killing the family members of police and army personnel. To thwart the JVP military offensive, the State launched a generalised counter-insurgency campaign. The armed forces and police appear to have been given a wide latitude of action to eliminate the

rebel movement and restore law and order in any way they saw fit. Anyone suspected of being a subversive was often arrested and shot summarily (Para 28). Reports indicate that in the autumn of 1988, the security forces used their new powers liberally as political violence intensified (Para 29). By the end of November 1989, the armed forces put down the JVP revolt when they succeeded in capturing and executing the nucleus of the JVP leadership. Conservative estimates put the number of deaths during this period of violence at over 40.000. For the same period, the Working Group has to date recorded over 2700 cases of disappearance (Para 30).

Resumption of fighting in the North-East

Following the withdrawal of the IPKF gradually from December 1989 and completely by March 1990, the LTTE took effective control of the North-East as the talks between the LTTE and the government continued. Fighting between the LTTE and its rival Tamil groups followed in which hundreds of persons were killed and thousands of Tamils fled to India and other countries (Para 32).

On 10th June 1990, the LTTE, breaking a 14 month ceasefire with the government, occupied Batticaloa police station followed by attacks on other police stations and army camps in the North-East, and full scale fighting resumed between government forces and the LTTE with the government redeploying troops from the South to the North-East (Para 34).

Muslims affected

The Muslim community in the North-Eastern Province has been severely affected, some sections being besieged by the LTTE. Muslim Home Guards act as a civil defence unit; they are armed and trained by the Sri Lankan army and often act jointly with them against LTTE cadres, a form of cooperation which has provoked retaliatory action by Tamil insurgents. Many Muslims have fallen victims of surprise attacks. Over 300 members of the community have been abducted to date. Two horrifying events took place in 1990 when the LTTE, in separate incidents, indiscriminately fired upon and killed Muslims in two mosques while the victims were at prayer (PARA 35).

Killings by the LTTE

The LTTE has also consistently carried out arbitrary execution-style killings of hundreds of civilians, including large numbers of Sinhalese and "dissident Tamils". The insurgents are

also responsible for many cases of abduction and torture of prisoners, including policemen and other government officials. Since June 1990, over 700 policemen have been killed in Batticaloa alone (Para 36).

Mass Killings and disappearances

In June 1990, the Sri Lankan army came back to the North-East, publicly vowing that the same strategy was going to be adopted against the LTTE as had been used to put an end to JVP terror in the South. The then Minister of Defence (since assassinated) announced an all-out war. A fierce counter-insurgency campaign ensued, reported to have led to mass killings and arrests, large-scale round-ups of non-combatant civilians and an almost total breakdown of civil administration. It is estimated that between June and September 1990, more than one million people were displaced by the fighting in the North-East. As of January 1991, over 210.000 had fled to Southern India and more than 5400 killed. Since the resumption of hostilities, the Working Group had recorded over 2000 cases of disappearance from that area. Those who live in "refugee" camps form a particularly vulnerable group, and there have been many reports of threats and attacks by government forces placed there to protect them. Many cases of disappearance have been recorded by the Working Group regarding inhabitants of such camps (Paras 37 and 38).

The phenomenon of disappearances

(a) Since 1980, 4932 cases of disappearances have been reported by NGO sources to the Working Group and transmitted to the government of Sri Lanka.

(b) For the Southern and Central Provinces, 3255 cases were transmitted between 1988 and 1990; 313 cases were reported to have occurred since 11 June 1990, and to date for the year 1991, about 40 cases have been reported to the Working Group.

(c) For the years 1980 to 1987 in respect of the Northern Province, the Working Group transmitted 821 cases attributed primarily to the Sri Lankan army; for the period 1987 to 1989, 43 cases were reportedly attributed to the IPKF; and more than 700 cases were reported to have occurred since 11 June 1990.

(d) In addition to the cases already processed and transmitted to the government, a large number of cases reported in 1990 and 1991 could not be processed before the Group's visit. These include approximately 7000 cases

alleged to have occurred in the Southern and Central Provinces between 1988 and 1990, over 2000 cases alleged to have occurred in the North-East since 11 June 1990, and approximately 30 cases alleged to have occurred in the Southern Province.

(e) In addition, during its visit the Working Group was directly handed over more than one thousand well documented individual reports from families of missing persons.

(f) During the visit, the government handed over reports of widespread killings in the South by the JVP of police and government officials as well as reprisal killings of entire families of police and civil officials. It also provided reports of widespread killings and disappearances, which included Muslims, Sinhalese and opposition Tamil groups, in the North-East attributed to the LTTE.

(g) The Group was informed that the LTTE was responsible for approximately 91 abductions, apart from the death of 100 policemen off duty. It received reliable information that the LTTE detention centres currently exist in the North-East, where it is believed a number of missing police and military are being held in detention incommunicado. It also received reports of 290 individual cases of abduction from the Muslim communities attributed to the LTTE.

(h) The Group also received reports covering all regions of mass disappearances, as well as other reports and studies analysing the phenomenon of disappearances in Sri Lanka, or highlighting certain elements believed to create conditions in which disappearances can take place.

(i) In the North-East, while the majority of disappearances have been attributed to the army and the police,

Muslim civil defence groups, known as "Home Guards" were also said to be responsible for several disturbances. Home Guards came into existence to protect the Muslim communities after mass killings of Muslim civilians by the LTTE in August 1990

(j) In many cases, search and round-up or "cordon" operations conducted by the army or by combined military and police forces, sometimes accompanied by armed men in civilian clothing, resulted in large numbers of persons being detained at one time. The Group received reports of numerous cases of mass detentions in which persons who were not released and who subsequently disappeared included women of all ages, children and the elderly.

(k) Many disappearances were reported to have occurred in the context of reprisals. In some cases, large numbers of young men in a town, region or "refugee" camp were alleged to have been detained in cordon and search operations after an armed encounter between security forces and terrorist groups.

(l) From the detailed reports received by the Group, it was able to determine that, while the numbers of disappearances in the South had diminished with the elimination of the JVP leadership, disappearances continued to occur in steady numbers, and in the North-East there has been a large increase in the number of cases reported to the Working Group.

(m) The Group has so far received over 1000 cases alleged to have occurred in 1991, 40 from the South, and the rest from the NorthEast.

Conclusions

(a) The context in which the phenomenon of disappearances has

materialized in Sri Lanka largely arises from two major sources of conflict: first and foremost, the confrontation of Tamil separatist militants and government forces in the North-East of the country; secondly, the confrontation between the JVP and government forces in the South.

(b) Disappearances and other violations of human rights most frequently occur in situations of generalized violence and excessive and undirected use of force. In the Sri Lankan context, observers agree that, in view of the situation that eventually developed, the use of state force per se, both against the LTTE and the JVP, did not contradict international norms. However, in the course of that use of force, human rights violations have been committed, particularly as regards non-combatant civilians. The fact remains that the Group has recorded up to 12000 cases of disappearances between 1983 and the present. It should be pointed out that this figure does not include abductions by non-governmental forces such as the LTTE and JVP.

(c) The Working Group wishes to emphasize that the cases of disappearances alleged to have occurred in Sri Lanka rank as the best documented cases among those from 40-odd countries appearing in the Group's annual reports to the Commission on Human Rights.

(d) On the basis of the material available, the Working Group has concluded that, both in the North-East and South, the army, and predominantly the police in the south, have been involved in disappearances. Death squads, which given the circumstances could only have operated with the acquiescence of government forces, have been informed as well. Also implicated were civil defence units, armed and trained by the army.

Anmerkung zum sogenannten Thondaman Proposal: Die ausführlichen Vorschläge des Ministers für die Beendigung des Konfliktes in Sri Lanka können über das Südasiensbüro bezogen werden (DM 5,- in Briefmarken).