

Sri Lanka: The black holes of mass graves

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Local-int'l report on failed exhumations calls for presence of int'l observers, strong legal/policy frameworks for transparent political interventions

If the Government of Sri Lanka is serious about dealing with the past, it must commit to having international observers at all exhumations of mass graves, for the country has failed to achieve satisfactory results despite decades of various forms of attempts. Strengthening the domestic legal and policy frameworks, ensuring transparency, and genuine and knowledgeable interventions by the political authority is necessary, if the country is to succeed in dealing with the exhumation of mass graves.

This was underscored by several human rights organisations, at the launch of a joint report titled “Mass Graves and Failed Exhumations in Sri Lanka”, which was released last week in Colombo. Among the organisations that were involved in the drafting and issuing of the report were the Journalists for Democracy in Sri Lanka (JDS), the Families of the Disappeared (FoD), the Centre for Human Rights and Development (CHRD), the International Truth and Justice Project (ITJP), the International Centre for Ethnic Studies (ICES), and the Women’s Action Network (WAN). Activists and affected families addressed the event.

ITJP Executive Director Yasmin Sooka noted that documenting the crimes, collecting the evidence and preserving it is just the first step, and that even 30 years later, the struggle for truth, without which the guarantee of non-recurrence remains elusive, is still ongoing. She added: “Accountability is not an optional exercise; it is essential for building a future for all Sri Lankans.”

Meanwhile, expressing concerns that after three decades and 20 attempted exhumations, only a handful of bodies have ever been identified and returned to families, FoD’s Brito Fernando said: “We all know that tens of thousands of bodies lie in shallow graves all over the island, so we cannot describe this dismal rate of progress as bad luck. It is a clear lack of political will.” Expressing similar sentiments, CHRD Executive Director and attorney K.S. Ratnavale, who has represented families in mass grave cases, also opined that there is a total lack of political will with regard to mass graves-related investigations and enforced disappearances in Sri Lanka.

Decades of failure

“The multiple failures in exhumations provide further evidence that the Government is unable or unwilling to ensure accountability for the alleged commission of core international crimes and other serious human rights violations, regardless of when they happened or during which conflict,” the report concluded, adding that this is in total violation of the rights of victims, including their right to truth. In this context, it added, the Government is obliged to develop measures to fulfill the rights of individuals seeking information on the reasons for and circumstances of the abuse suffered, which includes investigations of gross human rights abuses resulting in mass graves.

Adding that under international law, the State is obliged to take a number of positive and affirmative actions with regard to mass graves, the report explained: “Under international law, the protection of

the sites of mass graves is of paramount importance in order to preserve the integrity of the remains, the associated evidence and the lines of enquiries. Protection measures should safeguard human remains against contamination, desecration, robbery, scavengers and the movement and relocation of bodies to secondary sites, where a perpetrator is seeking to evade detection. If a State lacks the political will, or is unable to fulfill these obligations, the international community has a responsibility to assist. If the Office on Missing Persons (OMP) as a State body, is unable to assist victims' families and to perform this role in an independent and transparent manner, then the international community including the International Committee of the Red Cross (ICRC) or International Commission on Missing Persons (ICMP) needs to step in."

The report raised concerns about the genuineness and impartiality of the steps taken to look into the issues pertaining to mass graves, claiming that many of the failures identified in the report, including the lack of involvement of the families, the limited forensic capacity, the unclear procedures, and political interferences, among others, amount to deliberate steps by the State to thwart the victims' right to know the truth, which it said were in violation of international and domestic law. These failures have also been recorded by key United Nations (UN) Special Procedures, including the UN Working Group on Enforced or Involuntary Disappearances (WGEID) and the UN Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence, regarding which the Special Rapporteur has stated: "It is unusual for middle-income countries like Sri Lanka to have such problems." "Sri Lanka urgently needs to improve its scant expertise on the investigation and prosecution of 'system crimes', in other words, crimes that involve the systematic and coordinated use of State organs and those that result in large-scale violations and abuses of international human rights or international humanitarian law. This would include specialised expertise on investigations, forensics and the design of prosecutorial strategies. Improving judicial capacities regarding system crimes is as necessary as it is urgent." This is in a context where, though some progress has been made since the said Special Rapporteur's last visit to Sri Lanka in 2017 and the 2020 report, including through the work of the OMP, much remains to be done in order to ensure that exhumations are done in line with international standards and established good practices.

The report further underscored in its conclusion that Sri Lanka also needs to enact a specific law and policy governing the management of mass graves, including their identification, preservation and investigation over time and for future generations. This may include establishing a legal entity that is independent of politicians and is transparent.

Way forward

A number of steps need to be taken to address the abovementioned situation, as per the report, which put forward recommendations for the Government with regard to restoring past exhumations, and for the OMP and the international community including the ICRC and the ICMP with regard to future exhumations.

The Government was urged to take a number of steps concerning the affected families. Appointing a family liaison officer for each of the exhumations where relatives continue to wait for answers, actively engaging with people who suspect their relatives to be among the bodies exhumed, giving relatives an opportunity to identify the remains and any possessions and artifacts recovered to date, returning any identified remains to their families, and ensuring that psychosocial support is provided to victims' families, particularly when in contact with law enforcement officers, were among them.

Among the other recommendations were, enacting a specific law and policy on the management of mass graves and exhumations, which includes their identification, preservation and investigation over time, regarding which it was noted that preservation should include the safe storage of skeletal

remains removed from graves or the soil and to ensure that the chain of custody remains intact. Establishing a legal entity made up of representatives of the Government, local authorities, forensic experts, families and communities concerned to have oversight of the issue of mass graves and exhumations, was another recommendation. In addition, the Government was recommended to refrain from conducting any new exhumations until the new legal and policy framework is in place and the forensic capacity has been fully strengthened, and to enact the proposed Inquest Act, commit to always having international observers at any exhumations and to actively involve international forensic experts whenever the complexity of the task requires it, restructure the Attorney General's (AG) Department, create an independent public prosecution service in order to ensure that any prosecutions resulting from the exhumations are conducted in an independent and impartial way, send Sri Lanka's preliminary report to the Committee on Enforced Disappearances after full consultation with the civil society and families of the disappeared, strengthen the OMP, and drawing up a national exhumation policy, clarifying the role of individual agencies as part of the national transitional justice policy.

The recommendations for the OMP and the international community including the ICRC and the ICMP included, establishing a professionally-skilled specialist unit to probe into the locations of other possible mass graves, reinforcing their forensic capacity and ensuring that it has adequate resources, examining without undue delay all locations of potential mass graves and creating a database to ensure their protection, and strengthening judicial independence, including in respect of the security of their tenure, the conditions of service, personnel administration and disciplinary matters in the judiciary including promotions and dismissals as well as training on international crimes.

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