

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27)
LKA 1/2012

1 March 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/16, 16/4, 15/21, 16/5, and 17/5.

In this connection, we would like to bring to your Excellency Government's attention information we have received regarding **repeated instances of excessive use of force against peaceful protestors**, and undue restrictions on the rights to freedom of peaceful assembly and expression in Sri Lanka.

A previous joint allegation letter, on the arrest and detention of 42 human rights and political activists on their way to a peaceful protest in Jaffna on 10 December 2011, on the occasion of Human Rights Day, was sent by several mandate holders on 29 December 2011. As of today, no response to this allegation letter has been received from your Excellency's Government.

According to new information received:

On 18 February 2012, the United National Party (UNP) held a peaceful protest at Fort Railway Station in Colombo against the recent increase in fuel prices. The leader of the main opposition party, UNP parliamentarians and members of the Tamil National Alliance (TNA) participated in the protest. Protesters were reportedly attacked by the police with tear gas and water cannons. Despite the fact that the demonstrations began reportedly peacefully, the police's Special Task Force (STF) and the armed forces were subsequently called in to supplement police efforts on crowd control as protestors began responded violently. It was

reported that many protestors suffered minor injuries, including MP Dr. Jayalath Jayawardene who was reportedly hospitalized after being hit by a tear gas canister.

On 14 February 2012, another peaceful demonstration against the increase in fuel prices, organized by a group of fishermen, was reportedly met with excessive use of force by law enforcement authorities. A young fisherman from Chilaw, Mr. Anthony Fernando, was reportedly shot dead by an STF officer. A large group of police, as well as soldiers and the STF had been brought in to control the crowds. The Inspector General of Police had reportedly sent the Criminal Investigation Department to record statements with regard to the incident.

On 25 January 2012, media organizations staged a peaceful protest termed “Black January”, calling for authorities to investigate into attacks over the past years on media personnel and institutions. They listed, inter alia, the murders of the editor of the Sunday Leader, Lasantha Wickrematunga (2009), the disappearance of political columnist Prageeth Ekneligoda (2010), the attacks on the Sirasa media network (2009 and 2010) and on TV producer Lal Mawalage (2008). Although Colombo Fort Magistrate Kanishka Wijeyratna had reportedly issued an order that media activists be allowed to stage their protest at Fort Railway Station, the venue had to be changed as a court order was obtained by the police imposing various restrictions on the demonstrations. Nevertheless, pro-government groups, some armed with clubs, were present at the original venue, and could protest despite the court order and held placards calling the “Black January” members traitors and supporters of the “Liberation Tigers of Tamil Eelam”. There were reportedly very few police present at the pro-government rally, while there were hundreds dispersed to the “Black January” venue.

On 17 January 2012, a group of activists belonging to 17 human rights organizations and political parties operating in the South of the country, travelled in a convoy of buses to Jaffna to participate in a peaceful protest organized by the Organization Collective against Abductions and Disappearance (OCAD), a platform of civil society organizations working on cases of disappearances and abduction. On its way to the protest, a special police unit first stopped the buses at Punnawa, four kilometers before Vavuniya, and ordered them not to proceed further as a bridge had reportedly been destroyed. The buses were then searched for one hour at Joseph Camp, and at the police headquarters near Vavuniya. The buses were eventually allowed to continue, but were again stopped at Thaandikulam in Vavuniya, and searched another time for three hours as the police had allegedly received information that bombs were transported in these buses. The buses were finally stopped five kilometers after Vavuniya allegedly because four bombs in a truck ahead of them were being neutralized by the army. The buses never reached Jaffna. In the meantime, a group of unidentified individuals reportedly attacked the Thinakural Rest hotel in Jaffna where the OCAD had planned a media briefing. The hotel and three vehicles parked in the vicinity were damaged.

In August 2011, a protest was staged in Jaffna outside military barracks following an alleged attack against women belonging to minority communities, after which the perpetrators had reportedly escaped into the military compound. The police

dispersed the crowd firing into the air, and a few hours later the military reportedly arrived in large numbers in the neighborhood and proceeded to drag people from their homes, beating women, children and men indiscriminately, and arresting 102 people. Those arrested were reportedly denied access to health services until much later in the day, despite the fact that some had sustained severe injuries during the roundup. It was only when they were presented before a judge that they were allowed access to the hospital. A second similar incident took place in Jaffna a week later, with more than 22 persons arrested and scores of people beaten.

On 30 May 2011, approximately 600 persons gathered peacefully within the Free Trade Zone (FTZ) outside of Colombo to protest against the newly introduced Employees' Pension Benefits Fund Bill. Hundreds of police officers were present and attempted to disperse the crowd by using tear gas. When the workers attempted to flee, witnesses reported that the officers, armed with guns and iron poles, began severely assaulting the FTZ workers and opened fire while they forcibly entered the FTZ factories. Mr. Roshen Chanaka, a FTZ worker who had been inside the factory during the demonstrations, was shot as the police entered and later died from his wounds on 1 June. The police rounded up the injured workers and detained them for a period of time without allowing them immediate access to health services. Despite the protests of Mr. Chanaka's family, the military reportedly arrived at their home in the morning and moved his body to a church where there was a large military presence. Many FTZ workers subsequently filed fundamental rights petitions. It was not until January 2012, eight months after the incident, that the Attorney General's office announced that several police officers would be charged in relation to Mr. Chanaka's death.

Finally, more generally, it is reported that, the police require advance notice prior to any meetings, whereas such notification has no legal basis in domestic law. In addition, the military attend meetings without having been invited, with a view to intimidating the participants.

Grave concerns are expressed about the reportedly excessive use of force by law enforcement authorities against peaceful protestors through, inter alia, the use of live ammunition for crowd control. Further concerns are expressed about the aforementioned undue restrictions on the rights to freedom of peaceful assembly and of expression. Finally, similar concerns are expressed for the physical and psychological integrity of human rights, political and social activists, as well as media professionals.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force by law enforcement authorities. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka has acceded to on 11 June 1980, provides that every individual has the right to life, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Under international law when force is used excessively without strict compliance with the principles of necessity and proportionality, any loss of life as a result amounts to an arbitrary deprivation of life and is therefore unlawful.

In this regard, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990) provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement officials. According to principle 4 of the Basic Principles on the Use of Force and Firearms, law enforcement officials should as far as possible, apply non-violent means before resorting to the use of force and firearms. Principle 13 states that “In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”

We further appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would also like to appeal to your Excellency’s Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In addition, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 in which the Council “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others,... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In this connection, we would further like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 6, points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) of the Special Representative of the Secretary-General on the situation of human rights defenders, and in particular to paragraph 98 which states that "in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials."

In this connection, we would like to recall that, in its resolution 7/12, the Human Rights Council urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

Further, in the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that persons involved in

investigations of cases of disappearance, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person(s) are respected and that accountability of any person guilty of the alleged violations is ensured. We further urge your Excellency's Government to strictly abide by international standards governing the use of force in policing assemblies. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged by the aforementioned victims or on their behalf in as far as this has not yet happened?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the aforementioned incidents. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the aforementioned victims or their families.
6. Please indicate how the aforementioned measures taken by the police and the military are compatible with international norms and standards regarding the rights to freedom of peaceful assembly and expression, as contained, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Jeremy Sarkin
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions