

**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 Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the human right to safe drinking water and sanitation; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: UA G/SO 218/2 Health (2002-7) G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24) Water (2008-1)  
LKA 6/2011

30 August 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the human right to safe drinking water and sanitation; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/2, 17/2, 15/15, 15/22, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the continued detention of Mr. **Gunasundaram Jayasundaram**, 56 years of age, an Irish citizen arrested on 4 September 2007 in Colombo, Sri Lanka under suspicion of supporting the Liberation Tigers of Tamil Eelam (LTTE). Mr. Jayasundaram is the subject of two urgent appeals sent on 19 June 2008, by the Special Rapporteur on the independence of judges and lawyers, and Special Rapporteur on the question of torture; and on 14 August 2009, by the Working Group on Arbitrary Detention, and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment. We regret that to date we have not received any responses from your Excellency's Government to the aforementioned communications. Mr. Jayasundaram is also the subject of Opinion No. 30/2008 (Sri Lanka) by the Working Group on Arbitrary Detention.

On 12 September 2008, the Working Group on Arbitrary Detention in the aforementioned Opinion stated the following: "The deprivation of liberty of Mr. Gunasundaram Jayasundaram is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9, 14, and 26 of the International

Covenant on Civil and Political Rights, and falls under categories II and III applicable to the consideration of cases submitted to the Working Group.”

The Working Group further drew attention to the following circumstances: Mr. Jayasundaram was arrested without warrant on orders of the military authorities under the Emergency Regulations No.19/ (2). The accusations against him were based solely on statements of another person, whom reportedly, Mr. Jayasundaram had never met. Mr. Jayasundaram was arrested and held in detention without prompt access to a lawyer. He was detained without charge and was not brought before an independent judicial authority. The Government’s response that Mr. Jayasundaram was supporting the LTTE was unsubstantiated and the allegations brought against him did not justify his arrest and prolonged detention.

According to new information received:

Mr. Jayasundaram is reported to be in need of serious medical assistance as he suffers from blood pressure problems and a debilitating mosquito-borne viral disease which has caused pain in his joints. He is asthmatic and has had various respiratory problems which have been worsened by regular bouts of the flu. He also suffers from insomnia, acute distress, anxiety and depression as a result of his detention which included periods in solitary confinement. He does not wish to ask for medical assistance from the prison administration as the last time he did, he was sent to the prison hospital where he said he seriously feared for his life as he was exposed to other seriously ill people, some with contagious diseases. He no longer takes his blood pressure medication as it causes frequent urination and he is reportedly not allowed out of his cell at night to use the toilet facilities.

Mr. Jayasundaram is said to be currently suffering pain from a hernia. It is reported that his family fears for his deteriorating health and he urgently requires an operation within a proper medical facility. His serious state of health required him to undergo his first operation in July 2011 without close family members being present. He was reported to be handcuffed by the feet to the bed by four security guards as soon as he returned to the ward following his operation. He was ordered to lift his leg so that his ankle can be handcuffed and despite pleas from Mr. Jayasundaram that he could not feel anything, the security guards reportedly pushed and pulled his anesthetized legs into place. A doctor is reported to have ordered the security guards outside the room and explained to them that it would take 4-6 hours for Mr. Jayasundaram to regain any feeling. Additionally, he recently lost a tooth which had required root canal treatment and he has had a toothache for over a fortnight but is unable to see a dentist. Mr. Jayasundaram reportedly requires a second groin hernia operation. The current medical service provided to Mr. Jayasundaram is inadequate and will not alleviate the various health problems he is experiencing. Mr. Jayasundaram is reported to be severely depressed, believing that he will not survive the sufferings he has had to endure throughout his detention.

To date, Mr. Jayasundaram has been detained for almost four years and still has not been charged with an offence. Efforts to seek judicial remedies, including a

habeas corpus application filed on his behalf and a fundamental rights application before the Supreme Court have been met with repeated delays. He currently remains in prolonged detention in Wellikada remand prison in Colombo and has been deprived of regular contact with his wife and children who reside in Europe.

Grave concerns are expressed with respect to the physical and psychological integrity of Mr. Jayasundaram. Additional concern is expressed that Mr. Jayasundaram is unable to access medical facilities, goods and services for his urgent medical needs. Further concerns are expressed at the continued prolonged detention of Mr. Jayasundaram in light of Opinion 30/2008 stating that his deprivation of liberty is arbitrary and in contravention of the relevant international human rights standards and principles. We reiterate the request in the aforementioned Opinion for the Government to remedy the situation of Mr. Jayasundaram and to bring it into conformity with its international human rights obligations and to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Without in any way implying any conclusion as to the new information received on the case, we also wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights – which your Excellency's Government acceded to on 11 June 1980 – that specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all States Parties to ensure that health facilities, goods and services are available and accessible without discrimination to everyone, especially the most vulnerable or marginalized sections of the population, including those held in detention.

In its General Comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights stated that “the creation of conditions which would assure to all medical service and medical attention in the event of sickness, both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services.” This is particularly pertinent with respect to persons in detention, who should be given access to curative and rehabilitative health services without discrimination. The Committee also notes that “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting access for all persons, including prisoners..., to preventive, curative and palliative health services.”

The International Covenant on Economic, Social and Cultural Rights also entails human rights obligations attached to access to safe drinking water and sanitation. The General Assembly in its resolution 64/292 recognized “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” The Human Rights Council, in its resolutions 15/9 and 16/2 also recognized by consensus the right to safe drinking water and sanitation. The right to sanitation means that all people must have access to safe, affordable, and acceptable sanitation without discrimination.

We would like to also draw your Government's attention to Rule 12 of the Standard Minimum Rules for the Treatment of Prisoners. (Adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977) which stipulates that "The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner." We also draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988). Similarly, the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. Rule 22(2) of the Standard Minimum Rules for the Treatment of Prisoners also provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers." Furthermore, Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." Rule 15 provides that prisoners "shall be provided with water and with such toilet articles as are necessary for health and cleanliness."

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Gunasundaram Jayasundaram are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Gunasundaram Jayasundaram in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Gunasundaram Jayasundaram to your Excellency's Government in addition to that communicated by the Working Group on Arbitrary Detention?
3. Further to the Working Group on Arbitrary Detention's Opinion 30/2008, please provide information concerning the legal grounds for the arrest and detention of Mr. Gunasundaram Jayasundaram and how these measures

are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the case of Mr. Gunasundaram Jayasundaram. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate whether compensation has been provided to the victim or the family of the victim.
7. Please provide information on the measures taken to ensure the safety of Mr. Gunasundaram Jayasundaram.
8. Please indicate whether Mr. Gunasundaram Jayasundaram has been formally charged with a crime and if so, whether a date for trial has been set.

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.

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Catarina de Albuquerque  
Special Rapporteur on the human right to safe drinking water and sanitation

Gabriela Knaut  
Special Rapporteur on the independence of judges and lawyers

Ben Emmerson  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Anand Grover  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment