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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the 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 the Special Rapporteur on violence against women, its causes and consequences.

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Excellency,

We have the honour to address you in our capacities 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, Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/16, 16/4, 15/21, 16/5 and 16/7.

In this connection, we would like to bring to your Excellency Government's attention information we have received regarding the arrest and detention of **42 human rights and political activists** who were planning to attend a peaceful protest in Jaffna Town on the occasion of Human Rights Day. These activists belong to, inter alia, the non-governmental organization Committee to Investigate Disappearances (CID), a fisherman's association, the media, the Nava Sama Samaja Party (NSSP), the Communist Party, and the Socialist Party.

According to the information received:

On 10 December 2011, 42 human rights and political activists from the south of the country travelled in a bus from Colombo and other parts of the country to Jaffna to join a peaceful protest to mark Human Rights Day in Jaffna. The protest was organized by a collective of civil society groups and activists, including the non-government organizations International Movement against Discrimination and Racism, Right to Life, the CID, families of the disappeared and a number of political parties, to denounce alleged on-going human rights violations in the country.

When reaching Jaffna at 10:30 a.m., the group of human rights and political activists proceeded to the central bus stand where the main protest had been organized. They were, however, stopped at the Vembaddi junction by a group of police officers, led by a Sub Inspector (SI). The police officers searched the bus, confiscated, inter alia, 99 copies of Puthiya Samathanamam, a Tamil newspaper published by the NSSP; around 500-600 leaflets calling for investigation into disappearances; several placards and posters including photographs of disappeared persons; and two banners of the CID and the NSSP. No receipt was reportedly given for the material confiscated. The group was then surrounded by 15 police officers and 10 army officers, and was prevented from attending the peaceful protests.

Three activists circumvented the police cordon, and joined the protest at the central bus stand. They witnessed some quarrels between protestors and police officers who were trying to disperse the crowd. Many protestors were reportedly forced to leave the location, and those who refused to leave were reportedly threatened to be hit. The two activists informed the crowd that the group of human rights and political activists who came from the south of the country were blocked by the police, and called on them to walk towards the group. Police officers then reportedly formed a cordon around a group of female protestors, and reportedly hit and push some of them to the ground. The protestors then stayed at the central bus stand, and decided to continue the protest until the group of human rights and political activists from the south was released. The police officers took measures to ensure that the protest does not expand.

In the meantime, two of the three activists who earlier bypassed the police cordon, informed the Head Quarters Inspector (HQI) of the Jaffna Police that their group of human rights and political activists was being detained, and prevented from joining the peaceful protest at the central bus stand. The HQI asked the activists to present identity cards, who did so. The HQI then threw the card of one of the activists, who is a senior journalist, to his face, and told him to stop taking part in matters that are not of concern to him. The HQI eventually ordered a police sergeant to call the SI at the Vembaddi junction, order the release of the group and allow them to join the protest at the central bus stand.

One of the activists was then approached outside the police station by journalists who asked questions about the situation. While the activist was answering questions, the HQI reportedly shouted at him, pushed him, and ordered him to leave the protest. The activist then returned to the Vembaddi junction, expecting the SI to have released the group. However, the HQI's order reportedly did not reach the SI who refused to release the group. The group was ultimately released at 12:45 p.m. by the HQI, and allowed to join the protest in the central bus station.

Before departing Jaffna later that day, one of the activists asked a police officer whether he could be returned the material that had earlier been confiscated. The

police officer refused, and reportedly told him that he and his fellow activists should feel fortunate for not having been killed that day.

On 12 December 2011, members of civil society organizations held a peaceful protest in Colombo to denounce the detention and harassment of the human rights and political activists by the police in Jaffna.

On 13 December 2011, members from the CID, the Communist Party, the Socialist Party, and the NSSP, filed a complaint with the Inspector General of Police (IGP) against the way the police in Jaffna handled the situation, asking that an inquiry be conducted into the incident, and that the material confiscated be returned, in particular the photographs of disappeared persons. The Officer in Charge of the Special Investigation Unit reportedly recorded the complaint, and informed that a special order from the IGP was given to the area Deputy IGP of police to inquire into the incident. It is reported that a similar complaint will soon be filed by the aforementioned activists to the National Human Rights Commission.

Serious concerns are expressed that the detention of the aforementioned human rights and political activists, the confiscation of their material, and the acts of intimidation faced by them, may be related to their legitimate human rights activities, including work on enforced disappearances, in the exercise of their rights to freedom of expression and of peaceful assembly. Further concerns are expressed that these latest incidents may form part of a pattern of intimidation and harassment against human rights and political activists in the country.

We would like to 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, which provides that "Everyone 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 International Covenant on Civil and Political Rights, 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.

Furthermore, we would like to draw the attention of your Excellency's Government's attention to Human Rights Council's resolution 15/21, 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 in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, 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” (OP1).

In this connection, we would 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 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 then 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.”

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the 2007 report to the General Assembly of the then Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

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 persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

In addition, we would like to bring to Your Excellency’s attention to Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination

within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 5 October 1981), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay.

Further, we would like to bring to Your Excellency's attention Article 7 (c) of the Convention on the Elimination of All forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. We would, moreover, like to bring to Your Excellency's attention Article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women which notes that States should recognize the important role of the women's movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

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. Please indicate the legal basis of the detention of the aforementioned human rights and political activists, and the confiscation of their material. Please indicate how these measures are compatible with international human rights norms and standards as contained, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.
3. In the absence of legal basis of such measures, and in relation to the aforementioned acts of intimidation against the human rights and political activists, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate which measures are in place for ensuring that human rights defenders and civil society can work effectively, and how the physical and psychological integrity of those exercising their legitimate right to defend human rights is respected and guaranteed.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

Jeremy Sarkin
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