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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the human right to safe drinking water and sanitation

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (33-27) Water (2008-1) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacities as 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 extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 16/4, 15/21, 17/5, 16/23, and 16/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the excessive use of force, including lethal force, during an assembly in Weliweriya, Sri Lanka, which resulted in at least three deaths and 15 injured persons.

According to the information received:

On 1 August 2013, in Weliweriya, the Gampaha District of the Western Province, more than 4,000 protesters reportedly assembled peacefully to demand the Government to take action against a company whose glove factory, through chemical emissions, had polluted the water - the only drinking water resource in about 15 local villages. The police used tear gas to break up the peaceful protest, which allegedly led to some clashes with the protesters. As a consequence, the military, who were offering assistance to the police to disperse the crowd on the road, started shooting. It is alleged that the military officers shot at protesters who were trying to flee as well as at those trying to rescue other persons.

As a consequence, at least three protestors were reportedly killed and many more were injured and hospitalized. One of the persons killed was reportedly a 29-year-old man, who was injured during the protest and subsequently died during his treatment at the national hospital. At least 15 persons were reportedly wounded. It is further reported that the military also beat up several journalists covering the

incident and damaged their cameras. Among them, a photographer of a Sinhala-language newspaper was beaten by the military officers and, as a consequence, hospitalized.

Grave concerns are expressed that the alleged excessive use of force by security forces against peaceful protestors may amount to the violation of their rights to freedom of peaceful assembly and of opinion and expression. We are also deeply concerned about the resulting deaths and injured protesters. Concerns are also expressed that the human rights to water and sanitation of the local population in Weliweriya were not protected or ensured.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESR), which were both acceded to by the Government of Sri Lanka on 11 June 1980.

We would like to refer your Excellency's Government to article 19 of the 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 refer to 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 interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

In this connection, we would like to further refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, 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."

With regard to the three deaths resulting from the reported excessive use of force by the security officers, we would like to refer to article 6(1) of the ICCPR, under which the Government of Sri Lanka has the obligation to protect every individual's right to life and to ensure that no individual on its territory or subject to its jurisdiction is arbitrarily deprived of his or her life.

The use of lethal force by law enforcement officials is strictly regulated under international human rights law, according to which, when force is used excessively

without strict compliance with the principles of necessity and proportionality, any loss of life that results is an arbitrary deprivation of life and therefore illegal. The principles of necessity and proportionality under international human rights law are interpreted to mean that, including in the context of violent assemblies, lethal force may be used as a last resort, with the sole objective of saving life.

In this context, we would like to draw the attention of your Excellency's Government to Principle 4 of the United Nations Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Principle 9 particularly stipulates that "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish all violations of the right to life, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council resolution 1989/65). In particular, principle 9 provides that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". Principle 18 further requires Governments to "ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice." We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

With respect to the human right to safe drinking water and sanitation, we would like to remind your Excellency's Government that ICESR, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child entail human rights obligations attached to access to safe drinking water and sanitation. Furthermore, on 28 July 2010 the UN General Assembly explicitly recognized water and sanitation as a fundamental human right. In 2010 the Human Rights Council (resolution 15/9) explicitly reaffirmed that safe and clean drinking water and

sanitation are a fundamental human right, derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable of physical and mental health, as well as the right to life and human dignity. Your Excellency's Government co-sponsored this resolution, which was adopted by consensus.

The human right to water means that everyone is entitled to sufficient, safe acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. The human right to sanitation means that everyone, without discrimination, has physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.

The Committee states that the "obligation to protect requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water, and polluting and inequitably extracting from water resources, including natural resources, wells and other water distribution systems". States also have an obligation to "fulfil", which calls on States to "adopt the necessary measures to enable and assist individuals to enjoy the right and to ensure direct provision as a last resort, when individuals are, for reasons beyond their control, unable to provide for themselves".

In addition, States must establish accountability mechanisms. The Committee confirms that "any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels." Victims of violations of the right to water should be entitled to "adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition."

Moreover, since 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, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate the reasons justifying the alleged use of excessive force, including lethal force, during the aforementioned demonstration and how these measures are compatible with the aforementioned international norms and standards.
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 any of the above case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. 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 what measures have been taken, or are to be taken, to ensure that the rights to freedom of peaceful assembly and of opinion and expression are respected and that the physical and psychological integrity of those exercising these rights are guaranteed.

6. Please indicate whether the victims and their families have been or will be provided with reparation for the harm and suffering caused.

7. What measures have been taken by the Government of Sri Lanka in order to ensure safe drinking water sources for the local population in Weliweriya?

8. What accountability mechanisms are available for the victims to hold the company who polluted water sources accountable?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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.

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

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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

