

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA LKA 3/2019

27 May 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the human rights of internally displaced persons; Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 37/12, 33/9, 34/9, 32/11, 34/21, 34/6, 34/35, 40/10 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the increasing communal violence targeting religious minorities in Sri Lanka, in particular Muslims, as well as the precarious living and security conditions of displaced refugees and asylum seekers belonging to religious minorities, as a result of intimidation and acts of violence.**

Serious concerns over repeated patterns of inter-communal violence and of organized attacks against persons belonging to minorities in Sri Lanka, and in particular against Muslims, have been expressed in the past through our letters addressed to your Excellency's Government in 2014, 2017 and 2018 (cases nos. LKA 6/2014, LKA 3/2017 and LKA 1/2018 respectively). We thank your Excellency's Government for its reply to our 2014 letter (LKA 6/2014). However, we regret the absence of any substantive response to the other two letters and to our expressed concerns and the specific questions seeking clarifications with regard to the alleged facts, as well as to the measures undertaken to investigate human rights violations and to identify and sanction those

responsible for those attacks and for fomenting racial and religious hatred and inciting violence.

According to new information received:

Between 5 and 13 May 2019, a number of attacks against persons belonging to minorities, and in particular the Muslim minority, perpetrated by groups of individuals, have been reported in several locations in the western and northwestern provinces in Sri Lanka, including in the Gampaha, Puttalam, Kurunegala and Bingiriya districts.

These attacks may have been acts of retribution against Muslims for the Easter Sunday terrorist attacks on 21 April killing more than 250 people and seriously injuring more than 500, in Christian churches and hotels, and a result of the subsequent environment of fear and inter-communal mistrust reflected in hateful comments posted on social media after those attacks.

The first reported violent incident took place on 5 May in Poruthota (Negombo, Gampaha district), where a road accident allegedly escalated into a localized inter-communal violence, as a result of which a number of Muslim-owned shops were attacked. Reportedly, the violence continued even after the curfew imposed by the local police.

On 12 May, two other incidents occurred in Chilaw (Puttalam district) and in Kuliyaipitiya (Kurunegala district) respectively. In Chilaw, several attacks were reported against Muslim-owned businesses, homes and places of worship, following a number of comments on social media reportedly inciting hatred and violence. A curfew was declared during the day until 4am on 13 May and social media was blocked by the Government. In Kuliyaipitiya, attacks were perpetrated against Muslim-owned shops and it is reported that three individuals suspected to have caused the material damages were arrested by the police. However, later that day, hundreds of individuals, including a number of political parties' representatives, gathered outside the Kuliyaipitiya Police station and demanded the release of the three arrested suspects. They were released later that night.

In the afternoon of 13 May, violence was reported in various other locations in the Kurunegala and Bingiriya districts (North Western Province), with groups of individuals attacking Muslim-owned businesses, homes and places of worship.

On 14 May, a number of other violent incidents occurred in the North Western Province, during which dozens of shops and houses were attacked. These attacks were reportedly perpetrated by organized groups of individuals, some of whom may have arrived at the locations by bus.

It has been reported that in Puttalam district (North Western Province) a Muslim man suffered a mob attack at his carpentry workshop. The man reportedly sustained serious cut injuries to his neck and face and died after being admitted to the Marawila hospital in Puttalam. There is no information as to whether any investigation has been carried out concerning the death of this man.

An island-wide curfew was imposed overnight on 13, 14 and 15 May. A daytime curfew still remains in place in areas of the western and north western provinces, where violence occurred. On 12 May, an island-wide blockage on social media was also imposed, which is the third such ban since the Easter Sunday attacks. Aside from calling the public to stay calm, the Government has warned the population not to spread or share rumors and false statements, recalling that it is a punishable offence under the Emergency Regulations, which were adopted following the Easter Sunday attacks of 21 April.

A number of concerns have been raised over the expanded powers granted to the Sri Lankan security forces under the new Emergency Regulations, and in particular with regard to the degree of oversight of the implementation of these regulations and the adverse effects on the respect and protection of human rights and freedoms.

The Sri Lanka Police spokesperson confirmed that more than 70 people have been arrested in relation to those attacks and for incitement to hatred and violence, and 33 have been remanded. Some have been arrested for directly participating in the violent attacks, but the majority has been arrested for breaking the curfew. Among those arrested is the leader of the Sinhala-Buddhist group *Mahason Balakaya* (“Demon Force”), Amith Weeransinghe. Mr. Weeransinghe had also been arrested in March 2018, in connection with the anti-Muslim campaigns and violent attacks in Kandy district, and had been granted bail in October 2018. Furthermore, it has been reported that in Kurunegala district, some of the arrested individuals may have been moved to other police stations with the help of local politicians.

However, concerns have been expressed over the Sri Lankan security forces’ conduct during these events. Despite the curfews and the emergency regulations being in effect, as well as the public warning by the Police Chief that police officers would respond to rioters with force, security forces, in many of the locations, have reportedly been passive bystanders, failing to intervene to maintain order and to ensure protection against aggressive mobs.

Following the Easter Sunday attacks, approximately 1,600 refugees and asylum seekers (including women and more than 300 children) have been forced to leave

their homes around Negombo and Pasyala, due to harassment, intimidation and attacks they have reportedly experienced by groups of local people. Some of them may have been evicted by their landlords following pressures from groups of local people. Many of these refugees and asylum seekers belong to persecuted religious minorities in their home countries, mainly from Pakistan and Afghanistan, including Christians, Ahmadi Muslims and Shi'a Hazaras. Most of these 1,600 individuals remain in mosques and community centers in Negombo and Pasyala, whereas approximately 180 sought refuge in a parking lot at the Negombo police station in overcrowded and unsanitary living conditions with no privacy for women, including pregnant women. They reportedly do not have access to basic services, including medical care.

In addition, it is reported that some of these displaced asylum seekers, including women and children, were arrested by the Immigration Department at the Ahmadiyya Mosque in Negombo for having expired residence documents and were sent to the Mirihana immigration detention facility, situated south of the capital Colombo. A number of them were later released, while eight remain in detention; six in Mirihana immigration detention facility and two in the Kurunegala prison. There is genuine fear among these refugees and asylum seekers that they may be subject to further arrests or detention without proper relocation, while some are suffering from worrying health conditions such as infections, respiratory illnesses or diarrhea, and high blood pressure with no access to healthcare. On 18 May, 35 of them were transferred from the Negombo police station to Poonthoddam camp in Vavuniya,

We wish to express our unreserved condemnation of the Easter Sunday attacks of 21 April, which themselves represented a fundamentalist assault on the cultural sites associated with a minority group, with grave consequences for human rights, and resulted in significant loss of life. We recognize the need to take effective measures to prevent such attacks, and bring their perpetrators to justice.

However, and without prejudging the accuracy of the new information received, we express serious concern over the ongoing violence reportedly representing indiscriminate reprisals for the 21 April attacks, and which targets religious minorities in Sri Lanka, and in particular the Muslim minority in the western and north western provinces of Sri Lanka. We are concerned over the reported destruction of Muslim-owned properties, businesses, houses and Muslim places of worship. The human rights and cultural sites of all minorities must be protected from assault by diverse fundamentalist and extremist groups.

We express serious concerns over the reported rising tide of inter-communal hatred and expressions of racial and religious intolerance, including through social media, and the instrumentalization of such expressions for the perpetration of what appeared to

be a number of planned and coordinated group attacks, which generated fear and insecurity among members of the Muslim minority living in the affected areas. These incidents have taken place in a period of mounting inter-communal suspicion and tension following the Easter Sunday attacks of 21 April and have exposed once more the deeply entrenched racial, ethnic, and religious prejudices and misconceptions, which may have in some cases been used to serve specific political purposes and agendas, at the local as well as at the national level in Sri Lanka.

Moreover, we are concerned about recent developments, which demonstrate that the culture of impunity in Sri Lanka fuels new cycles of violence as well as interethnic violence and instability. The recurrence of incidents of inter-communal violence, the degree of premeditation of this violence in some cases, the extensive use of social media to spread misinformation and nurture stigmatizing myths about the Muslim minority and the use of hate speech to escalate small local incidents (such as traffic accidents, land disputes or comments on social media) into communal confrontation combine to form a very dangerous pattern that needs to be effectively addressed.

We note the efforts by the Sri Lankan authorities to prevent further escalation of the violence with the arrest of a number of alleged perpetrators and the imposition of curfews. Nevertheless, we are concerned over the reported continuation, in some of the areas, of the violent incidents, even after the imposition of curfews, and in some cases even with the presence of security forces.

We also note the expanded powers granted to the Sri Lankan security forces under the new Emergency Regulations and we wish to stress the need for effective oversight of the implementation of these regulations and for monitoring and investigating any violation committed by security forces, with the purpose of ensuring the effective protection of all human rights and freedoms without discrimination on any grounds. The implementation of these Emergency Regulations needs to be strictly limited to the exigencies of the post- 21 April attacks situation in Sri Lanka, proportional and limited in terms of duration.

Furthermore, serious concern is expressed over the vulnerable situation and the harsh living conditions faced by the 1,600 refugees and asylum seekers, belonging to minorities, including women and children, who, following the Easter Sunday attacks of 21 April, were forced to leave their homes. Of particular concern is their current situation as regards safety, hygiene, sanitation, food, and appropriate access to medical care and other services. Finally, we express concern over the reported arrest of some of the displaced asylum seekers and their detention at the Mirihana immigration detention facility, which, according to an in situ assessment by the Working Group on Arbitrary Detention in December 2017, is overcrowded and entirely inappropriate for holding people for prolonged periods.

We also wish to draw your Excellency's Government's attention to the joint statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, and Karen Smith, United Nations Special Adviser on the Responsibility to Protect, issued on 13 May 2019. In this statement, the UN Special Advisers expressed their alarm about "the growing acts of violence on the basis of religion" in a country which is trying "to move forward from a traumatic a traumatic period of inter-ethnic armed conflict". Furthermore, they warned against "the growing influence of nationalist and extremist views of identity" that put religious minorities at risk and called on all ethnic and religious groups, as well as the political forces, civil society and the security sector "to work collaboratively in taking appropriate action and immediately stop these hateful attacks."

On 14 May, another statement was issued by the United Nations in Sri Lanka expressing concerns over the "emerging incidents of communal violence and tension in the aftermath of the Easter Sunday attacks", and calling on the Government of Sri Lanka and the security forces to "hold the perpetrators and inciters of violence to account" and to ensure that "interventions, under the State of Emergency are applied in a proportionate and non-discriminatory manner that will respect the rights of all communities and individuals while ensuring their security."

The above allegations appear to be in contravention of the rights of every individual to life, liberty and security of person, physical integrity, freedom of religion or belief, right to take part in cultural life and non-discrimination enshrined in articles 3, 5, 7, 9, 18 and 27 of the Universal Declaration of Human Rights (UDHR), in articles 2, 6, 7, 9, 10, 18, 20, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), and in articles 2 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Sri Lanka having been party to the latter two covenants since 11 June 1980. They also are in contravention of the relevant provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Sri Lanka has been a party since 18 February 1982, in particular articles 2, 4, 5, 6 and 7, as well as with the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55). Finally, allegations are also in contravention of articles 11 and 12 of the ICESCR which enshrine the rights to adequate housing and to health.

In its General Comment No. 31, the Human Rights Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by private persons or entities could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

In its 2016 concluding observations on Sri Lanka, the Committee on the Elimination of Racial Discrimination (CERD) expressed its concern inter alia over the difficulties faced by ethnic and ethno-religious minority groups, including the Muslim ethno-religious minority, to freely practice their right to freedom of religion and over the reported cases of desecration of places of worship and disruption of religious services (CERD/C/LKA/CO/10-17, paragraph 18).

Furthermore, the CERD, in its General Recommendation No. 35 on combating racist hate speech, underlined “the role of racist hate speech in processes leading to mass violations of human rights and genocide” (para. 3), and urged States parties “to include measures against racist hate speech in national plans of action against racism, integration strategies and national human rights plans and programmes” (para. 47).

In addition, the Durban Declaration and Programme of Action, recalling article 4 (b) of ICERD, reiterates that States are obliged to “be vigilant and proceed against organizations that disseminate ideas based on racial superiority or hatred, acts of violence or incitement to such acts” (para. 87).

As stated by the Special Rapporteur in the field of cultural rights, Governments must ensure there is a counterweight to fundamentalist and extremist discourses by publicly challenging them (A/HRC/34/56, para.24). The Special Rapporteur also stressed that States must respect, protect and fulfil human rights, in particular cultural rights, meaning that they must: (a) stop supporting directly or indirectly fundamentalist ideologies; (b) protect all persons from any act of fundamentalist or extremist groups aimed at coercing them into specific identities, beliefs or practices; and (c) design programmes aimed at creating conditions allowing all people to access, participate in and contribute to cultural life, without discrimination. Noting that fundamentalist and extremist assaults on minorities and their cultural sites and practices have become widespread around the world, she also recommended that States develop plans of action that are fully gender sensitive to protect religious, ethnic and sexual minorities and women from extremism and fundamentalism, and implement urgent action policies when such groups are the targets of fundamentalist and extremist threats or violence (A/HRC/34/56, para. 97k). Moreover, the Special Rapporteur also calls on States to act effectively to combat fundamentalism and extremism but refrain from violating human rights or international law in so doing; not use the legitimate struggle against fundamentalism and extremism as an excuse for violations of human rights. (A/HRC/34/56, para. 97u).

Recognizing that above-mentioned alleged violations have been perpetrated against religious minorities in Sri Lanka, we would like to bring to your Excellency’s Government’s attention the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the ICCPR and the 1992

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

In 2016, during a country visit to Sri Lanka, the Special Rapporteur on Minority Issues received information about the absence of effective prosecution in the cases of violent crimes motivated by religious intolerance due to, *inter alia*, the alleged political patronage of religious leaders or politicians, and expressed concerns over the rising hate speech that continues to plague Sri Lankan society (A/HRC/34/53/Add.3, paragraphs 31, 32 and 33).

Furthermore, we wish to recall the provisions in the Revised Deliberation No. 5 on deprivation of liberty of migrants, adopted by the Working Group on Arbitrary Detention, on 23 November 2017. Paragraph 11 states that “the deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.” Paragraph 40 states that “detaining children because of their parents’ migration status will always violate the principle of the best interests of the child and constitutes a violation of the rights of the child”, whereas paragraph 41 states that detention of migrants in other situations of vulnerability or at risk, including pregnant women and breastfeeding mothers, must not take place.

In its 2017 visit to Sri Lanka, the Working Group on Arbitrary Detention expressed concerns over the detention conditions in immigration detention facilities in the country, including with regard to overcrowding and the poor sanitary and living conditions and has recommended that Sri Lanka: a) ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and develop a national legal framework in relation to asylum seekers and refugees that reflects international standards; b) enact legislation that would specify that any detention in the course of migration proceedings must be exceptional, ordered by a judicial authority only in cases when specifically prescribed by law and assessed as necessary and proportionate in individual cases; c) ensure that a dedicated process is put in place which allows for the identification of stateless persons; d) ensure that alternatives to detention in the context of migration, which are accessible and realistic, are deployed, and; e) cease holding migrants in Mirihana immigration detention facility immediately as it is entirely inappropriate for such purposes. (A/HRC/39/45/Add.2, paragraphs 70, 71 and 91).

Also we recall that General Comment No.7 of the Committee on Economic, Social and Cultural Rights requires States to prevent forced evictions and the UN Guiding Principles on Internal Displacement of 1998 stipulate that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, without discrimination of any kind

(principle 3(1)). The State also has a responsibility to ensure that any property and possessions left behind by those displaced should be protected against destruction (principles 21) and that conditions are established and means provided which allow IDPs to resettle voluntarily, in safety and with dignity, in another part of the country (principle 28).

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism would like to reiterate the recommendations to the Government of Sri Lanka contained in A/HRC/40/52/Add.3. In addition, the Special Rapporteur would also like to bring to the attention of the Government paragraphs 74 to 78 of A/HRC/37/52.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 the above-mentioned person(s) in compliance with international instruments.

As 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 observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations and concerns.
2. Please provide the details, and where available the results, of any investigation and/or inquiry undertaken on the violent incidents of May 2019 in the western and north western province, including judicial inquiry(-ies) on the conduct of law enforcement during these incidents. If no investigation has been initiated, please explain why.

3. Please provide information on the specific measures undertaken to combat impunity for hate motivated crimes against persons belonging to religious minorities in Sri Lanka. In addition, please provide detailed information on the measures undertaken to identify and sanction all those found responsible for inciting hatred and violence, as well as all those who have actively participated in the attacks of March 2018 and of May 2019. Please provide updated information with the regard to the ongoing investigations on the Easter Sunday attacks of 21 April, as well as their outcomes.
4. Please indicate the measures undertaken to curb ethno-religious hate speech against all religious minorities, particularly through social media, and information on any prosecutions for hate speech offences related to the above incidents. Please also provide information on any specific training and public awareness raising programmes, including programmes targeting law enforcement, as well as religious leaders and all those holding public office.
5. Please provide information on measures adopted to ensure the safety of people belonging to the Muslim minority, as well as their businesses, homes and places of worship and to prevent forced evictions and forced displacement.
6. Please provide information on the measures undertaken to ensure that all those affected by these violent incidents will be provided with access to effective remedy and adequate compensation.
7. Please provide information on the measures undertaken to effectively oversee the implementation of the recently adopted Emergency Regulations, to investigate reported cases of misconduct by members of the security forces or by “any person authorized by the President in that behalf” (Regulation 56(2)), including also killings by such officers (as per Regulation 57), and to prosecute and sanction those responsible.
8. Please indicate the measures undertaken to ensure that the implementation of the Emergency Regulations is limited to the extent strictly required by the exigencies of the post- 21 April attacks situation in Sri Lanka, and is proportional and limited in terms of duration, and does not discriminate against any person in Sri Lanka based on race, ethnicity or religion.
9. Please provide updated information regarding the situation of the 1,600 displaced refugees and asylum seekers from Negombo and Pasyala. In particular, indicate the measures undertaken to ensure their safe relocation

to areas that would provide security of tenure and an adequate standard of living and access to healthcare without discrimination.

10. Please provide updated information on the measures undertaken to ensure that those out of the 1,600 individuals, who are asylum seekers, could obtain access to a fair and efficient refugee status determination procedure, without discrimination.
11. Please provide updated information on the situation of those displaced asylum seekers, who were reportedly arrested and sent to the Mirihana immigration detention facility and other places of detention. Please indicate the measures undertaken to expeditiously cease their detention and to ensure that non-custodial alternatives are promoted while their immigration status is being resolved, including in accordance with the international standards guaranteeing the best interests of the child and the rights to liberty and to family life.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Leigh Toomey

Vice-Chair of the Working Group on Arbitrary Detention

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Special Rapporteur in the field of cultural rights

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