

**Mandates of the Special Rapporteur on freedom of religion or belief; 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 minority issues; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL LKA 2/2020

8 April 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 40/10, 42/16, 34/6 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 circular by the Ministry of Health of Sri Lanka providing standard guidance on the autopsy practice and the disposal of COVID-19 related dead body.**

According to the information received:

In March 2020, the Ministry of Health published Provisional Clinical Practice Guidelines on COVID-19 suspected and confirmed patients (MoH Guideline). This circular includes a chapter on the autopsy practice and the disposal of dead bodies.

Up till the third version of the MoH Guideline published on 27 March 2020, it was provided that *a body related to death either confirmed (Category I) or suspected (Category II & III) of COVID-19, should be **disposed** within 24 hours (preferably within 12 hours) according to the guidance listed below:*

- *The body should never be washed under any circumstance.*
- *Cremation or burial is allowed. However, burial is allowed provided that all steps to prevent contact with body [are] ensured.*
- *The body has to be placed in an airtight sealed body bag and a sealed coffin.*
- *The grave should have a depth of 6 feet (deep burial). It should not contaminate with ground water.*
- *The grave should be identifiable and traceable.*
- *The disposal of bodies must be monitored by police, Ministry of Health and Public Health Inspector.*
- *The police and other government agencies must follow the legal aspect and their procedures.*

However, on 31 March 2020, the Ministry of Health amended the Guideline and the fourth version with the amendments provided that *a body related to death either confirmed (Category I) or suspected (Category II & III) of COVID-19, should be **cremated** within 24 hours (preferably within 12 hours) according to the guidance listed below:*

- *The body should never be washed under any circumstance.*
- *The body has to be placed in a sealed body bag and a coffin.*
- *Exclusive cremation.*
- *The disposal of bodies must be monitored by police, Ministry of Health and Public Health Inspector.*

We understand that this fourth amendment of the MoH Guideline came following the cremation of a COVID-19 victim of a Muslim community on 31 March 2020 in Negombo, without consultation with and against the wishes of his family. We are concerned that the amendment is inconsistent with the [Infection Prevention and Control for the safe management of a dead body in the context of COVID-19](#) guideline provided by World Health Organisation (WHO Guideline). Furthermore, we are concerned of the lack of consideration provided and the lack of sensitivity in the MoH Guideline to different communities and their religious and cultural practices.

We recognize that the pandemic of COVID-19 has posed serious public health challenges and that there is a need to take various factors into consideration in making sure the spread of COVID-19 is contained. While the reasons for the decision of the Ministry of Health to make such amendment have not been communicated, and do not seem to have been decided with any consultation with the relevant communities, we would like to stress that the legitimacy for such amendments should be based on the principles of legality, necessity, proportionality and non-discrimination. Indeed, when cultural or religious sensitivities are involved, an inclusive and participatory dialogue or consultation with relevant stakeholders, including the civil society and different ethnic or religious communities must be conducted before a decision is taken. Such a participatory approach and clear communication to all stakeholders of the steps taken and the reasons for taking such steps, are also more likely to increase public confidence in such measures and minimise public disquiet over such restrictions.

In this regard we would like to bring specific attention to the following:

- 1. Method of the disposal of dead body-** Under the section on Burial, WHO Guideline provides that people who have died from COVID-19 can be buried or cremated. Under the section on Burial by family members or for deaths at home, it further indicated that in contexts where mortuary services are not standard or reliably available, or where it is usual for ill people to die at home, families and traditional burial attendants can be equipped and educated to bury people under supervision. Besides, the WHO Guideline clearly outlined that

one of the key considerations is to avoid hasty disposal of a dead from COVID-19.

2. **Handling of the dead body-** MoH Guideline instructed that the dead body should never be washed under any circumstance and that the body has to be placed in a sealed body bag and in coffin. WHO Guideline does not preclude that a person such as family member or religious leader can prepare the deceased that involved washing, cleaning or dressing body, tidying hair, trimming nails or shaving. It only instructed the necessary safety and health precautions to be taken when any person decided to do so according to their customs or religious rites. It also allows for cloth wrapping.
3. **Viewing of body-** WHO Guideline also provided that the family wishes only to view the body may do so, as long as the family is given clear instructions not to touch or kiss the body and to use standard precautions at all times. It was furthermore indicated that family and friends may view the body after it has been prepared for burial, in accordance with customs.

By contrast, the MoH Guideline allows the viewing of the body only by close relative/s in a pre-designated area in hospital and it forbids viewing after the body is sealed. Even with this provision in place, some family members of deceased allegedly did not get to see the body before the cremation took place. This has reportedly created a lot of stress to the deceased's family.

4. **Sensitivity to local, customary and religious practices-** WHO Guideline has highlighted that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout. It was advised the need to apply principles of cultural sensitivity or to handle the burial or dead body in accordance with customs while ensuring standard precautions are followed at all time.

We recommend that attention be given in the MoH Guideline to existing cultural and religious sensitivity or traditions in the country. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) protects everyone's right to freedom of thought, conscience and religion. The Human Rights Committee in its General Comment 22 paragraph 4 advises that the freedom to manifest religion or belief may be exercised "either individually or in community with others and in public or private". It elaborates that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including ritual formulae or ceremonial acts.

While the manifestation of religion or belief may be restricted as per Article 18(3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others any such limitation must fulfil a number of obligatory criteria including **being non-discriminatory in intent or effect** and constituting the least

restrictive measure. Even in the face of overwhelming public necessity that falls on one or more of the five grounds for permissible limitations noted in Article 18(3), if there is a less restrictive measure, a greater interference with the right to manifest one's beliefs will not be permissible. Given that the WHO Guideline does not discard burial, albeit under specific conditions for the preparation of the body, as one of two means for the disposal of the body, prohibiting burial would not be permissible according to the ICCPR.

Article 27 of ICCPR provides that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities also emphasised that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination (article 2.1), and persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life (article 2.2). Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).

In conclusion, we would like to encourage your Excellency's Government to reconsider the provisions in the MoH Guideline by taking into account of the key considerations provided by WHO Guideline for the disposal of the bodies of human beings deceased from the COVID-19, and revise the circular accordingly. In view of the challenges posed by the pandemic it is important that the Government avoids any unnecessary measures that are likely to raise tension and are running contrary to the respect of the fundamental human rights of the persons belonging to different communities that exist in Sri Lanka. Arbitrary decisions concerning the disposal of bodies of victims of the COVID-19 may also have the opposite effect to provoking the reluctance of families and communities to report COVID-19 cases in fear that they may be unable ensure proper funeral or burial rites for their loved ones. Ideally, such provisions should be revised in consultation with all the concerned ethnic and religious communities and other relevant health experts and stakeholders.

We respectfully reiterate the importance that the Government continues to uphold the right of freedom of religion or belief as well as the right of the minorities even during this challenging time. The protection of the privacy and identity of the patients or deceased without identifying their ethnicity or religious background in public would prevent their stigmatisation as individuals or member of a specific community.

We are taking the opportunity to stress that it is equally important that your Excellency's Government firmly condemn any attempt by anyone, irrespective of status, to issue or spread hate messages that are of a nature to instigate ethnic or religious

tensions or violence, including through accusations or blame that any particular ethnic or religious community is responsible for the pandemic of COVID-19.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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 any comment you may have on the above-mentioned allegations and concerns.
2. Please provide the rationale for the decision to limit the method of the disposal of the dead bodies to cremation. Has any consultation been held with relevant health experts, civil society and community members in order to ensure that the decision to prohibit the burial of COVID-19 victims is non-discriminatory, necessary and proportionate to the objective pursued?
3. Please provide information if relevant personnel dealing with the disposal of bodies of victims of the COVID-19 have been trained or informed to ensure that the close family member of the deceased get to see the body before it is sealed and that they are informed of the cremation of the body well in advance.
4. Please indicate the measures undertaken to ensure that ethnic and religious minorities, are not discriminated against in the implementation of this MoH Guideline and that their right to freedom of religion or belief with regard to burial rites and practices is upheld and respected.
5. Please provide information on the steps taken to tackle potential rise in hate speech against Muslims and other ethnic or religious minorities in Sri Lanka, including by protecting the identity of the COVID-19 patients or deceased?

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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standard of physical and mental health

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