

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

REFERENCE:  
AL LKA 6/2020

6 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur in the field of cultural rights; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 41/12, 37/12, 36/6, 43/16, 43/8 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged police harassment and excessive use of force against demonstrators during a peaceful assembly** for the International Day of the Victims of Enforced Disappearances held on 30 August 2020, in the districts of Jaffna and Batticaloa.

**Ms Amalanayagi, Ms Devi, Ms Chandra, Ms Suresh, Ms Jenitha, Ms Ranjana, Ms Sarojadevi and Ms Selvarani**, are women human rights defenders and long-standing members of the **Association of Relatives of the Enforced Disappeared North East (hereafter, the Association)**, an organization that seeks justice, truth and reparation for the families of the ethnic, linguistic or religious minority Tamils who were forcibly disappeared during the conflict. The organization has representations in eight districts across the country.

According to the information received:

In the late evening of 29 August 2020, **Ms Amalanayagi**, one of the organisers, received a court order by the Batticaloa Magistrate banning the peaceful protest planned for the International Day of the Victims of Enforced Disappearances, which the Association had planned in Jaffna and Batticaloa on 30 August 2020. Since there is no legal obligation to inform authorities about demonstrations according to domestic law, the police allegedly came to know about such protest by interrogating people who were planning to attend. Reasons given for the ban were the COVID-19 pandemic, the potential blocking of roads by the protestors, and "the high chances of regrouping of Liberation Tigers of Tamil Eelam (LTTE)". Moreover, the court order stated that the gathering might cause harm to the citizen's routine and disrupt peace. Since the order was addressed to Ms Amalanayagi, she was not able to attend the demonstration.

The same day, the local police warned **Ms Suresh** against holding a press conference she had planned for the Day of the Victims of Enforced Disappearances, leading her to hold it without publicizing it. Prior to the press conference, she received late night calls and visits by the police in her home and workplace, inquiring about the commemoration day. Moreover, the police reportedly threatened several media outlets against covering the commemoration. On the morning of 30 August 2020, prior to the demonstration, six members of the Criminal investigation Department (CID) questioned **Ms Devi** in her house about the place, date, time, and total number of persons attending the protest in Jaffa, threatening her not to take part.

On 30 August 2020, about 2,000 relatives of disappeared persons travelled to Jaffna and Batticaloa to participate in the commemoration and peaceful assembly. On the way there, CID officers, who took pictures without permission, stopped the buses and threatened the drivers not to take demonstrators to the gathering. **Ms Jenitha and Ms Chandra** were intimidated by CID officers and questioned about the time and place of the commemoration in Jaffna.

When demonstrators arrived in Batticaloa in the morning, police officers tried to stop the protest. In order to abide by health guidelines, demonstrators used face masks and organizers refrained from shouting slogans and instead used banners. However, the police verbally harassed individuals marching from Kalladi to Ghandi Park, including **Ms Ranjana and Ms Sarojadevi**, who were violently pushed to the ground. According to the information received, most of the verbal attacks against the peaceful protesters were based on allegations that their disappeared relatives were supporters of the LTTE. During the verbal attacks, they were also labelled as a LTTE members and terrorist supporters.

**Ms Selvarani**, leader of the Association in the Ampara district, was pushed and grabbed by the neck by the local police during the demonstration in Batticaloa. When she continued protesting, a police officer stomped on her leg to prevent her from doing so and forcefully removed the picture she was holding of her disappeared husband. It was not until she declared she would fast until the picture was given back to her that the officer returned it, advising her not to file a complaint for police violence against demonstrators.

We have also received information about the ban of other commemorative events related to the ethnic Tamils during the following weeks. Such bans appear to be part of a continued trend of local governments placing broader constraints on the exercise of the right to freedom of peaceful assembly, in particular through the seemingly arbitrary use of the COVID-19 pandemic, and others, such as disturbing citizens routine and peace, as a pretext for violating right to freedom of peaceful assembly and of association. In many cases, it appears these measures are being enforced in a discriminatory manner with vulnerable communities constituting prime targets.

While we do not wish to prejudge the accuracy of these allegations, we express concern at the aforementioned restrictions placed on the exercise of the rights to association and peaceful assembly, including through calls and constant

interrogations. We are concerned at the effects that these threats and intimidation against the women human rights defenders mentioned above might have on the rights of victims' organizations and civil society movements that promote reparation and memory initiatives in relation to the victims of the conflict in Sri Lanka.

We would like to express serious concern at the violence and harassment against members of the Association, who play a fundamental role in clarifying the fate of their relatives and for the perpetrators of their disappearances to be brought to justice. We recall the State's obligations to refrain from interfering in peaceful acts of commemoration, and its obligation to guarantee the safety and security of representatives of victims and civil society organizations, and human rights defenders in the enjoyment and promotion of the rights to truth, justice, reparation and guarantees of non-recurrence. Intimidating those who are organizing the commemorations denies these basic principles and rights, creating an atmosphere of fear that would discourage other persons to organise or attend commemorative events.

We remain concerned at the chilling effect that these attacks and efforts to stigmatize these activists might have on civil society actors who exercise their right to freedom of assembly and association. Threats, acts or intimidation and violence discourage them from exercising their rights, for fear that the government authorities may penalize them or further harass them. We also express our concern regarding the targeting of human rights defenders who organise themselves to defend their rights, and the rights of others, to truth and justice in a post-conflict context.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 comments you may have on the above-mentioned allegations.
2. Please provide information on the legality, necessity, and proportionality of the use of force in the context of the protests that took place in Jaffna and Batticaloa.
3. Please provide information about whether any investigation or judicial inquiry has been undertaken in relation to the harassment and violence against the above mentioned human rights defenders. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please indicate how the restrictions imposed on the commemoration of the International Day of the Victims of Enforced Disappearances comply with international standards in the field of transitional justice,

particularly with regards to memorialization and the rights of victims of gross human rights violations.

5. Please provide information on how the measures put in place to ensure that policies and decisions taken to fight against the spread of COVID-19 are compatible with the obligation to respect, protect and promote the rights to freedom of peaceful assembly and association.

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

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

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

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Karima Bennoune  
Special Rapporteur in the field of cultural rights

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes  
Special Rapporteur on minority issues

Fabian Salvioli  
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka acceded on 11 June, 1980, which guarantee the right to freedom of opinion and expression and the right to freedom of peaceful assembly. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. Additionally, under the provisions of article 22, everyone shall have the right to freedom of association with others.

We would further like to refer to the International Convention for the Protection of All Persons from Enforced Disappearance, which Sri Lanka ratified on 25 May 2016, and the Declaration on the Protection of all Persons from Enforced Disappearance in particular to article 24 (6) of the Convention and 13 of the Declaration, which require that witnesses, relatives and defense counsels be protected against any form of intimidation, harassment or ill-treatment and article 24 (7) of the Convention which requires states to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely". In the same vein, paragraph 24 of the General Comment N° 37 adopted by the Human Rights Committee stipulates that "States parties have certain positive duties to facilitate peaceful assemblies, and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. In the context of the COVID-19 pandemic, the Human Rights Committee has established that certain measures may, in certain circumstances, result in restrictions on the enjoyment of individual rights guaranteed by the Covenant, however, they must be of strict necessity and proportionality and in accordance with international obligations and non-discrimination (CCPR/C/128/2).

We also refer to the guiding principles developed by the Special Rapporteur on the rights to freedom of peaceful assembly and association on the need to respond to the emergency generated by COVID-19 in a manner that meets human rights obligations<sup>1</sup>. In particular, the second principle highlights the obligation to ensure that the public health emergency is not used as a pretext for violating rights, in this specific case, the Special Rapporteur has noted that the crisis is no justification for excessive force to be used when dispersing assemblies, and that States should incorporate sunset clauses into any states of emergency or laws passed in relationship to the current crisis.

---

<sup>1</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

In addition, we refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/20/27, which clearly stated that “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (para. 89).

We would further 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 5 (a), which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully;

Furthermore, we would like to draw your attention to General Assembly Resolution 68/181 whereby States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

Concerning the restriction’s imposed on the commemoration of the International Day of the Victims of Enforced Disappearances, we would like to recall the importance of memorialization processes concerning serious human rights violations and the transmission of knowledge about the harm suffered by victims of such crimes. In this regard, we would like to bring to your Excellency’s attention the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147, which recall that memorialization processes are part of the right of victims to reparation and shall include commemorations and tributes to the victims (paragraph. 22.g). In addition, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity recalls the duty to preserve memory about serious human rights violations, ensure the transmission of such

history, and facilitate knowledge of those violations (principle 3). As noted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the voices of the victims of human rights violations must occupy a privileged space in the construction of memory, avoiding the manipulation that can be claimed from the place of the perpetrators. He further noted that memorialization's aim is to enable victimized populations to explain a brutal past - without justifying it - thus easing existing tensions and allowing society to live more peacefully with the legacy of past divisions (A/HRC/45/45).

In a 2014 report on memorialization, the former Special Rapporteur in the field of cultural rights noted that "The Special Rapporteur recommends that States and other stakeholders support victims and families of victims of mass or grave human rights violations, or traumatic events, seeking to commemorate the past. Memorialization should be understood as processes that provide the necessary space for those affected to articulate their diverse narratives in culturally meaningful ways. Such processes encompass a variety of engagements which do not necessarily become concretized through the erection of physical monuments, but can also take the form of numerous activities and cultural expressions." (A/HRC/25/49, para. 103)

We would also 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 article 27 of the ICCPR and the 1992 UN 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 identity of minorities within their territories and to adopt the 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 and in full equality before the law (article 4).