

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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 and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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 and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention, threats and intimidation against human rights defenders, journalists and trade union leaders Mr. Sudesh Nandimal Silva, Mr. Senaka Perera, Mr. Tharindu Jayawardhana and Mr. Joseph Stalin.

Mr. **Sudesh Nandimal Silva** is a human rights defender and the General Secretary of the Committee for Protecting the Rights of Prisoners (CPRP), a non-governmental organisation which advocates for the rights of prisoners in Sri Lanka. The organisation, comprised of former prisoners, lawyers and human rights defenders, provides legal aid to prisoners and their families, conducts campaigns for improved prison conditions, and raises cases of alleged torture and deaths of detainees. In 1996, Mr. Silva was involved in the formation of a trade union in the Sri Lanka Railways company, where he is employed, and was the founding treasurer of what came to be the Railways Workers, Labourers & Employees Collective, and later the General Secretary. Both Mr. Silva and the CPRP have been engaged in public advocacy for justice in the years since the killing of 27 prisoners by members of the defence forces during a riot at Welikada Prison, Colombo on 9-10 November 2012, commonly referred to as the Welikada Prison Riot. Mr. Silva is also a key eye-witness in the case.

Mr. **Senaka Perera** is a human rights defender, lawyer and the President of the CPRP. He is also Mr. Silva's acting legal counsel.

Mr. **Tharindu Jayawardhana** is a human rights defender and a journalist publishing articles primarily in Sinhalese and covering issues including corruption, the environment and rights violations of ethnic and religious minorities such as Muslims and Tamils. Mr. Jayawardhana published a number of investigative articles on corruption and the environment, in particular whilst working for the Sinhalese daily newspaper "Lankadeepa". For his extensive use of the Right to Information law since 2016 to report on stories in the public interest, Mr. Jayawardhana was the recipient of a number of prizes. Mr. Jayawardhana founded the news website MediaLK in 2019, which covers news stories relating to social justice, human rights

issues and the rights of minorities in particular, as well as reprisals against those working against impunity.

Mr. **Joseph Stalin** is a human rights defender and trade union leader, who campaigns for education rights in Sri Lanka. Mr. Stalin is a former teacher and is currently the General Secretary of the Ceylon Teachers Union.

According to the information received:

Mr. Sudesh Nandimal Silva

On 30 April 2007, Mr. Silva was allegedly abducted and imprisoned in Gampaha, along with other members from the Railways Workers, Labourers & Employees Collective. The trade unionists were allegedly targeted in response to their protest against the abduction of two other members of the Collective in February earlier that year. Mr. Silva and the Collective members were charged with attempting an uprising, revolt and insurrection against the State and with collecting weapons from the Liberation Tigers of Tamil Eelam (LTTE).

Mr. Silva allegedly was held in pre-trial detention in Welikada Prison until 13 September 2013, when, following trial, he and other members of the Collective were found not guilty and released. During his time in Welikada Prison, Mr. Silva allegedly witnessed the Welikada Prison Massacre in 2012 during which 27 prisoners were killed by Sri Lanka's Special Task Force and army commandos, making him a key eye witness in the case, currently being prosecuted by the Attorney General.

On 5 April 2017, Mr. Silva filed a writ application at the High Court in Colombo, requesting that the investigations and prosecutions in the case of the Welikada Prison Massacre be expedited.

On 20 April 2017, during a mainstream Sinhala radio programme broadcast on Neth FM, the presenter reportedly accused those involved in seeking justice for the Welikada Prison Massacre of being Sinhala Tigers and of being motivated by wanting to please the LTTE diaspora. The presenter also reportedly encouraged listeners to consider those individuals unfavourably, allegedly saying "let the people of the country determine the plight of the people involved in seeking justice". The following day, Mr. Silva filed a complaint with the Criminal Investigation Department of the Police in response to the threats he reportedly received following the radio programme.

On 3 May 2017, the same presenter from the radio programme phoned Mr. Silva and reportedly asked him numerous questions in a harassing manner and demanded comments from him. Following the call, Mr. Silva filed a complaint with the Tissamaharama police station. On 4 May 2017, the radio programme allegedly broadcast an edited version of the recorded phone call with Mr. Silva, which he subsequently reported to the Police division for the Protection and Assistance of the Victims and Witness.

On 11 July 2017, Mr. Silva and Mr. Perera both received phone calls from the same number that was used by the radio presenter on 3 May 2017. The caller,

not known to either of the human rights defenders, reportedly threatened them against continuing to seek justice for the victims of the Welikada Prison Massacre and levelled death threats against them if they continued to participate in the legal case. Mr. Perera reported the phone call to the Tissamaharama police station later that same day, and the following day Mr. Silva did the same at Nittabuwa police station.

On 19 July 2017, Mr. Silva received a phone call from Mr. Nilantha Fernando, the Chief Engineer of Operations for Sri Lanka Railways, where he is employed. During the phone call, Mr. Fernando reportedly asked Mr. Silva if he was trying to send President Gotabaya Rajapaksa, former Secretary of the Ministry of Defence implicated in the Welikada Prison Riot, to prison. Mr. Fernando reportedly said that people like Mr. Silva should not survive in the world.

On the night of 4 September 2017, Mr. Silva was residing at his sister's apartment in Moratuwa, Colombo, when shots were reportedly fired at the apartment. Police officers from Moratuwa police station took a statement from Mr. Silva after the incident. In the following days, Mr. Perera reportedly wrote to the Prime Minister, the State Minister of Defence, the Minister of Justice, the Inspector General of Police, the Secretary of the Minister of Defence, detailing the threatening phone calls he and Mr. Silva had received and also the shots fired at Mr. Silva's sister's apartment whilst he was there. In the letters, Mr. Perera reportedly requested that inquiries into the incidents be initiated, which is still pending.

On 7 July 2021, two unknown men reportedly went to the apartment complex where Mr. Silva lives, owned by Sri Lanka Railways. The men reportedly inquired with his neighbours about his movements and whereabouts, and allegedly made a comment that some harm may come to Mr. Silva in the near future.

On the same day, some unknown individuals reportedly visited the home of one of Mr. Silva's relatives in Mount Lavinia, where he had lived 15 years ago. The individuals reportedly inquired about Mr. Silva.

Following these two incidents, on 10 July 2021 Mr. Silva filed a complaint with the Dematagoda police station in Colombo.

Mr. Tharindu Jayawardhana

On 29 June 2021, MediaLK published a report which referred to the Senior Deputy Inspector General of Police for the Colombo Crime Division (CCD), Mr. Deshabandu Tennakoon. The report mentioned that Mr. Tennakoon had been one of a number of officers included in an investigation by the Special Police Investigative Division, appointed to look into negligence on the part of the police in relation to the Easter Sunday bombings in Colombo on 21 April 2019. Mr. Tennakoon was reportedly included as one of the officers against whom the Special Police Investigative Division had recommended charges should be brought in reference to their alleged negligence in preventing the 2019 attacks. The investigation noted that Mr. Tennakoon had allegedly failed to fulfil his duties to prevent the attacks, and recommended a disciplinary

inquiry be opened against him.

This information was included in the report by MediaLK, as well as the fact that Mr. Tennakoon had reportedly been approved for a salary increase, despite the recommendations of the Special Police Investigative Division, as well as the recommendations by the Presidential Commission of Inquiry that he should be subjected to disciplinary action. The report published by MediaLK also referred to a comment reportedly made by the Minister responsible for the police during a press conference at the Department on Government Information on 18 June 2021, stating that the charge sheets against Mr. Tennakoon and the other accused officers had been forwarded by the Public Services Commission.

On 1 July 2021, MediaLK published an investigative report on its website following the retirement of a senior police officer who had recently been reportedly released on bail after 10 months in detention after the appeal court criticised his arrest. The report highlighted that the investigations he had carried out throughout his career, but did not mention his arrest or detention. The senior police officer had been arrested by the Colombo Crime Division (CCD) of the police in relation to various investigations he had undertaken. The senior police officer's arrest was overseen by Mr. Tennakoon and had reportedly drawn much attention from civil society organisations and the media, and the Human Rights Commission of Sri Lanka publicly expressed concern and fear for his safety in response to the arrest.

Later that evening, at around 9 p.m., Mr. Jayawardhana shared the report on Facebook from his personal account. On the evening of 2 July 2021, Mr. Tennakoon commented on the post, alleging that Mr. Jayawardhana had published false and fabricated information. In his comments, which he continued to leave on the post for a number of days thereafter, Mr. Tennakoon did not specify which elements of the report were factually incorrect.

Mr. Jayawardhana responded to the comments on Facebook, asking Mr. Tennakoon to specify which details were incorrect, to which Mr. Tennakoon responded, allegedly calling him a "liar" and that he had written "lies", both in this article and previously. Mr. Tennakoon also reportedly threatened Mr. Jayawardhana, commenting that "nature will give proper punishment" and that "nature will win". In one comment, Mr. Tennakoon also referred to "Prabhakaran and other criminals", making reference to the former leader of the Liberation Tigers of Tamil Eelam (LTTE), Velupillai Prabhakaran, who was killed in 2009. In response, Mr. Jayawardhana commented that if Mr. Tennakoon contacted MediaLK and asked that factual corrections be made, the website would oblige, commenting that "according to media ethics, we are bound to provide space for that clarification". Mr. Tennakoon reportedly responded that it was incorrect to say that it was recommended that disciplinary actions be taken against him, and threatened Mr. Jayawardhana: "People like this in society will be blessed by nature".

On 3 July 2021, following the alleged comments made on Facebook by Mr. Tennakoon, Mr. Jayawardhana wrote a letter to the Inspector General of Police (IGP), allegedly informing of the comments and requesting that his

safety and security and that of his family be guaranteed. The letter also contained requests that an inquiry be conducted into the comments made by Mr. Tennakoon, and that he be allowed to freely carry out his professional work as a journalist. The previous day, the Media Organizations Collective, a coalition of media freedom organizations, had also written to the IGP demanding that Mr. Jayawardhana be protected and similarly called for a formal inquiry. At the time of writing this communication, no response was received from the IGP to either of the letters.

On 4 July 2021, the Media Division of the opposition party Samagi Janabalavegaya (SJB) and the Deputy Leader of the United National Party (UNP) allegedly issued statements expressing concern in response to the threatening comments made by Mr. Tennakoon against Mr. Jayawardhana.

Mr. Joseph Stalin

On 8 July 2021, the Ceylon Teachers Union along with other teachers' unions organised a demonstration outside of the Ministry of Education in Battaramulla to demand the withdrawal of the Kotelawala Defense University (KDU) Bill, due to be discussed in parliament that day. The Bill has been criticised as an attempt by the Government to bring the national higher education system under military control and hinder access to free education.

During the demonstration, which reportedly adhered to the relevant COVID-19 safety measures, Mr. Stalin and 30 other demonstrators were allegedly arrested by police officers, allegedly for violating restrictions on public gatherings during the pandemic. The police officers reportedly used force to disperse the demonstration and arrest the participants. Later that day, following their arrest, Mr. Stalin and the other demonstrators appeared before the Additional Magistrate Court in Colombo. The Magistrate granted bail to Mr. Stalin and the group of detained demonstrators, and allegedly rejected a specific request by the police that the demonstrators be subjected to mandatory quarantine, on the basis that the Court was not mandated to make such an order.

Shortly after they appeared before the Magistrate and despite the rejection of the request for mandatory quarantine, Mr. Stalin and the other demonstrators were reportedly forced onto a bus by police and taken to the Sri Lanka Air Force Quarantine Centre in the Northern Province. In the centre, Mr. Stalin and the 30 other demonstrators were reportedly deprived of adequate facilities, including access to clean drinking water, and denied a change of clothes. Whilst detained in the quarantine centre for 8 days, Mr. Stalin and the group of demonstrators were allegedly not tested for COVID-19, nor were they visited by a Public Health Inspector (PHI).

Following the debate about the quarantine of the demonstrators in the parliament, the Minister of Public Security responded to criticism from the opposition leader, claiming that the decision to quarantine the demonstrators was taken by PHIs. However, according to media reports quoting the PHI Union Chairman, Mr. Uphul Rohana, no such consultation with PHI had reportedly taken place. Members of the Sri Lankan Human Rights Commission reportedly attempted to visit Mr. Stalin and the group of

demonstrators in the quarantine centre, but were denied access.

On 16 July 2021, Mr. Stalin and the other demonstrators were released from mandatory quarantine.

Without wishing to prejudge the accuracy of the information received, we are seriously concerned by the alleged intimidation, threats and arbitrary detention of human rights defenders Mr. Silva, Mr. Perera, Mr. Jayawardhana and Mr. Stalin, which appear to be in direct response to their human rights, journalistic and trade union activities. The reported threats against Mr. Silva and Mr. Perera in response to their advocacy against impunity and the right to justice for the victims and families of the Welikada Prison Massacre are cause for serious concern, as are the threats they have purportedly been subjected to, particularly in relation to Mr. Silva's role as an eye witness in the case. This concern is compounded by the perceived inaction by your Excellency's Government to respond efficiently and effectively to these threats to mitigate the risks faced by Mr. Silva and Mr. Perera. This inaction not only has a potentially harmful impact on their physical and psychological integrity, but also extends to a potentially detrimental impact on the creation of an environment in which members of society are encouraged to and feel safe to denounce impunity and seek justice and redress, without fear of reprisal.

We would like to further convey our concern for the reported threats against Mr. Jayawardhana by a public official on social media, in response to his legitimate journalistic activities, reporting on matters in the public interest and exercising his right to freedom of expression and freedom of association. It would also appear that Mr. Jayawardhana's efforts to correct any factual error in his reporting were in vain, and were met with further threats in response. We are equally concerned that Mr. Jayawardhana's requests to the relevant authorities for his safety to be guaranteed in light of the threats against him appear to have gone unanswered and unacknowledged.

We also wish to express our utmost concern regarding the information which would indicate that Mr. Stalin and other demonstrators were allegedly arbitrarily arrested and detained in quarantine, without a court order, in direct response to exercising their right to freedom of assembly. Further concerning, is that their arrest and detention appears to have taken place under the pretext of alleged COVID-19 measures, indicating an alleged misuse of such public health measures to prevent the legitimate exercise of the rights to freedom of opinion, expression and assembly.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the actions taken in response to the reported threats received by Mr. Silva and Mr. Perera to ensure their physical and psychological integrity, and in response to the numerous complaints filed by the human rights defenders in relation to these threats. If no actions have been taken, please provide information as to the reasoning.
3. Please provide information as to the reported threats against Mr. Jayawardhana made by the Senior Deputy Inspector General of Police, Mr. Tennakoon on social media, and any actions taken in response to reports of such threats, including disciplinary action against the relevant official or measures taken to ensure Mr. Jayawardhana's physical and psychological integrity both online and offline.
4. Please provide information on how your Excellency's Government protects witnesses in ongoing trials, and whether their witness protection is offered to individuals who believe they are at risk due to their role as a witness in high profile cases.
5. Please provide information as to the factual and legal basis for the alleged arbitrary arrest and detention of Mr. Stalin and other participants of the demonstration. Please provide information on which grounds they were charged and how the relevant provisions are in conformity with Sri Lanka's obligation under international human rights law with regards to the right to freedom of assembly. Furthermore, please provide the legal and factual basis for the detention of Mr. Stalin and the other participants of the demonstrations in a quarantine centre.

We would appreciate receiving a response within 60 days. Passed this delay, 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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

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 draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we wish to refer to articles 6, 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka acceded in 1980, which guarantee the right to life, liberty and security of person, freedom of opinion and expression, and the right to freedom of peaceful assembly and association. These rights are also provided for by articles 3, 19 and 20 of the Universal Declaration on Human Rights (UDHR).

We would like to recall that any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR, be determined by law and be necessary and proportionate to the aim pursued. In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions referred to above as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information".

With regard to the alleged arbitrary arrest and detention in quarantine of Mr. Stalin and other demonstrators, we wish to refer to Article 21 of the ICCPR, which stipulates that "The 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." The 'provided by law' requirement means that any restriction 'must be made accessible to the public' and 'formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly' (CCPR/C/GC/34). We also wish to recall that any deprivation of liberty resulting from the legitimate exercise of the rights guaranteed by the ICCPR is arbitrary (see also CCPR/C/GC/35, para. 17).

The Special Rapporteur on the right to peaceful assembly and association has cautioned in several occasions against the restrictions on the right to peaceful assembly during the COVID-19 pandemic and the corresponding State measures worldwide. We would like to remind your Excellency's Government to respond to the current crisis in compliance with its human rights obligations and to act according to the Special Rapporteur's ten key principles on guaranteeing the rights to freedom of peaceful assembly and association during public health emergencies.

In addition, we would like to refer to the Article 12, paragraphs 2 and 3 of the UN Declaration on Human Rights Defenders which provides that the State shall take all necessary measures to ensure the protection of everyone 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. We would also like to bring to refer your Excellency's Government to articles 1, 2, 5 (a) and (b), 6 (c) and 9.

Regarding the Welikada Prison Massacre case, and the intimidation, threats and attacks suffered by Mr. Silva and Mr. Perera in connection to their advocacy for justice for the victims of the massacre, we would like to recall that article 2 of the ICCPR sets out the duty of States to ensure that any person whose rights were violated has an effective remedy, and that the competent authorities enforce such remedies when granted. In this regard, we would like to refer to the obligation to investigate and punish human rights violations and to combat impunity for such crimes, pursuant to Article 2 of ICCPR. As established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations. We would further like to recall 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, which stipulates that in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate, prosecute, and punish those responsible (principle 4). They further call on States to take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims (principle 12.b)