

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Special Rapporteur on the right to development; the Special Rapporteur on the right to food; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of indigenous peoples; the Independent Expert on the promotion of a democratic and equitable international order; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

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(Please use this reference in your reply)

3 August 2022

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; Working Group on Arbitrary Detention; Special Rapporteur on the right to development; Special Rapporteur on the right to food; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights of indigenous peoples; Independent Expert on the promotion of a democratic and equitable international order; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 41/12, 42/22, 42/23, 49/13, 34/3, 43/4, 43/16, 42/20, 45/4, 49/10 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 **excessive and lethal use of force against protesters amid large scale daily demonstrations since 16 March 2022 that started in Colombo city and spread to other areas in Sri Lanka, in response to fiscal mismanagement of the debt crisis rising inflation, shortages of fuel and essential goods and prolonged power cuts as a result of a scarcity of foreign exchange. We would like to bring further attention to reports we've received on the subsequent arrests and arbitrary detention of peaceful protesters, human rights defenders, activists and journalists, seemingly for the legitimate exercise of their rights to freedom of peaceful assembly and of association, as well as to freedom of expression and of opinion.**

We have previously expressed concerns over the declaration of a state of emergency and the recent crackdown on protestors, as well as over the fiscal mismanagement of the debt crisis, in press releases dated 8 April 2022 and 20 July 2022 respectively.

According to the information received:

Excessive use of force and the announcement of emergency measures

Amid a dire economic crisis in Sri Lanka as a result of a scarcity of foreign exchange due to prioritization of debt servicing costs, which caused shortages of fuel and essential goods, extended and frequent electricity cuts, and rising costs of living, a small number of protesters gathered early March in several candlelight vigils nationwide. These gatherings grew in size and number as hundreds continued to assemble across the country in protest of the President's handling of the ongoing crisis. On 16 March 2022, tens of thousands of supporters of the opposition party the "United People's Force" carried out protests outside of the office of President Gotabaya Rajapaksa, in the city of Colombo, calling for his resignation.

On the night of 31 March 2022, following a social media campaign that gained momentum amongst large segments of the population, hundreds of protesters marched towards the President's residence in the suburb of Mirihana, in the city of Colombo, demanding his resignation. As the rally continued, thousands of additional demonstrators joined in after watching live broadcasts of the protests on a private TV channel and via social media platforms.

Although the protest was initially spontaneous and peaceful, tensions rose as police forces used tear gas and water cannons to disperse protesters, causing the injury and hospitalization of around 50 persons, and the beating and arrest of 45 persons, including journalists. Subsequently, unidentified individuals allegedly drove a bus into parked vehicles, set fire to other vehicles, including a police jeep, and encouraged demonstrators to break the security barrier. Later that night, a curfew was imposed by authorities coupled with an increased presence of security personnel in the city of Colombo.

Although a Statement by the presidency claimed that protests were led by extremists, who held iron rods and set police vehicles alight, the opposition accused the Government of sending their partisans to infiltrate the protests and initiate acts of violence.

On 2 April 2022, the Government declared a nationwide state of emergency. Further to a request from the Ministry of Defence, it also imposed a social media blackout on 3 April and a curfew on 4 April. Amid the imposition of these restrictive measures, daily protests continued and intensified across the country early April. Security forces used water cannons and tear gas in several instances to disperse demonstrators, and continued to arrest and detain protesters, students, human rights defenders and journalists.

The state of emergency was revoked by the Government on 5 April 2022.

Further to the resignation of several cabinet ministers on 3 April 2022 and to the reconvening of the parliament on 5 April, protesters continued to rally nationwide, including gatherings of students and doctors, to demand the

resignation of the entire cabinet. Police forces used tear gas to disperse some of the demonstrations.

On 9 April 2022, large-scale protests took place in Colombo, with those demonstrating including members of the LGBTI+ community, members of the Vedda indigenous peoples, students and trade unions. After authorities blocked access to the location of planned protests, namely Galle Face Green urban park in Colombo, tens of thousands of people across the country gathered in Galle Face opposite the Presidential Secretariat, demanding the resignation of the President. The protest was held for nine consecutive days, amid heavy rainfalls and internet outages due to the installation of a mobile phone jammer. In the following days, additional protests erupted in other cities, including Badulla, Galle, Matara and Kandy.

On 14 April 2022, a police officer at the Kuttigala Police Station was arrested for joining the Galle Face protests in uniform. He was taken into custody and questioned by the Police Special Investigations Unit, before being granted bail the next day.

On 16 April 2022, a number of police trucks were seen near the Galle Face protest and were later removed after their presence was reported on social media platforms. That same day, the Bar Association of Sri Lanka issued a statement requesting the Government to not oppress the protestors and to respect the legitimate exercise of the freedom of dissent of the people.

On the morning of 17 April 2022, the police removed the protesters' tents in Galle. After several lawyers intervened with the Senior Superintendent of Police (SSP), he agreed for protesters to re-install their tents.

During the afternoon of 19 April 2022, a group of individuals, who had been waiting for several hours in long queues to obtain fuel, staged a protest at the Rambukkana Crossing, in the Kegalle district, obstructing all entry and exit roads to Rambukkana for more than 15 hours. Police forces used tear gas and fired live ammunition to disperse the protesters, killing one individual and injuring 24 others, three of whom were reported to be in critical condition. According to the police spokesperson, the security forces had used live ammunition after the protesters allegedly started attempting to set fire to a fuel browser, which seemed to contradict video footage of the incident. The spokesperson further confirmed that 15 police officers have also been admitted to hospital with injuries.

On 28 April 2022, over 1000 trade unions conducted a nationwide one-day strike to express their support for the ongoing protests against the Government.

On 5 May 2022, a new movement was launched by university students who gathered in a sit-in outside the parliament headquarters, calling for the resignation of the Parliament and the end of governmental corruption. The protesters were affiliated with the movement known as "HoruGoGama" (Go home, thieves' village). Police forces used water cannons and tear gas against protesters, some of which were children, and further barricaded the area

in an alleged attempt to prevent other individuals from joining the protests. In the wake of this movement, the President declared a second nationwide state of emergency on 6 May 2022, imposing restrictions on the rights to freedom of peaceful assembly, of association as well as of expression.

On 9 May 2022, loyalists supporting the President gathered in the area of Temple Trees and the Galle Face Green to stage a counter-protest, expressing their support for the Government. Clashes erupted between loyalists to the regime and the peaceful anti-government protesters, leaving over 130 persons injured. The riot police joined by the military later intervened by using a water cannon and tear gas to disperse the two groups, and an island-wide curfew was thereafter imposed. That same day, another group of Government loyalists clashed with anti-government protesters in the city of Kandy. Further to the intensifying clashes as well as acts of retaliation and rioting by some individuals against Government loyalists, the Minister of Defence announced that the armed forces were called to back the police forces in containing the security situation at the Galle Face and surrounding areas.

In an attempt to calm down the violent clashes, the Prime Minister tendered his resignation on the same day. However, protesters continued to rally, while some unidentified individuals conducted reported retaliatory attacks targeting properties and monuments of the Rajapaksa ruling family. A group of individuals attempted to storm the Prime Minister's residence. Security forces are reported to have used tear gas and rubber bullets against the protesters.

In the morning of 10 May 2022, security forces had put an end to the attempts to seize the Prime Minister's residence.

On 11 May 2022, the military was deployed and given extended executive powers to shoot-on-sight orders to bring the violence under control, search, arrest and detain protesters for 24 hours, without a warrant. The next day, a list of 17 members of the GotaGoGama movement was banned from traveling based on a decision from the Fort Magistrate Court.

Peaceful protests continued regularly in Galle and elsewhere throughout the months of May and June 2022.

One protest took place on 25 May 2022 outside of the Criminal Investigation Department, demanding the arrest of a Member of Parliament who was considered to have led the groups of Government loyalists who clashed violently with protesters.

On 6 July 2022, a former Member of Parliament was arrested for participating in a peaceful protest near the President's residence, which prompted another protest that was met with tear gas by police forces.

The Inspector General of Police declared a "police curfew" on 8 July 2022, which was widely condemned by a number of lawyers, the Bar Association of Sri Lanka, as well as by a Member of Parliament as illegal, unconstitutional and

in violation of the rights to freedom of peaceful assembly and of association. The curfew was lifted the next day.

On 9 July 2022, a mass gathering of mainly peaceful protestors assembled near the President's official residence in Colombo, demanding his immediate resignation, the police used tear gas to disperse the crowd. The President fled the residence before the group of protestors overcame the police barricades and broke into the presidential residence, the presidential secretariat, and the Prime Minister's official residence, before assembling near the Prime Minister's private residence.

Police forces clashed violently with those assembled near the Prime Minister's residence, beating both protestors and journalists alike, injuring many. Later that day, the speaker of the Parliament stated that the President would resign on 13 July 2022.

Later in the evening that same day, a group of individuals breached the Prime Minister's private residence in Colombo in which a fire was started. A number of those who had broken into the President's residence, the presidential secretariat and the Prime Minister's official residence spent the night in the premises, continuing to demand the President's and Prime Minister's resignations.

On 10 July 2022, the police arrested three individuals on arson charges for their involvement in breaking into the Prime Minister's residence.

On 13 July 2022, the President fled the country, while the Speaker of Parliament announced that he had appointed Prime Minister Ranil Wickremesinghe as acting president in his absence. In reaction to this interim appointment, protestors thereafter stormed the office premises of the Prime Minister demanding that he resign, as well as the premises of the state-run television channel to demand the broadcasting of the ongoing anti-government protests after the broadcasts had been interrupted. The live broadcasts of the protests on state-owned channels later resumed.

Later that same day, a number of protestors carried out an attempt to breach the police barricades positioned on the road in the direction of the Parliament. That evening, the newly appointed acting President Wickremesinghe declared an island-wide curfew until 5 am local time on 14 July 2022.

On 14 July 2022, one of the protest leaders stated in a press conference that the demonstrators who had broken into and occupied the Presidential Palace and the Prime Minister's office would leave the premises and return them to the Government. The protestors peacefully withdrew from the latter, nevertheless remaining in the former Parliament building as well as Galle Face, in order to continue to voice their demands.

On 15 July 2022, the Speaker of Parliament made the announcement of the official resignation of President Rajapaksa, and Ranil Wickremesinghe was

officially sworn in as the Acting President. Protestors renewed their demands for Ranil Wickremesinghe to step down from his new position.

Shortly after assuming office, President Wickremesinghe declared a new state of emergency on 17 July 2022 and committed to taking a tough line against alleged “trouble-makers”.

On 20 July 2022, the Parliament elected Ranil Wickremesinghe as president in a secret ballot, notwithstanding the ongoing protests in Galle Face in Colombo and elsewhere, calling for him to step down.

On 21 July 2022, protestors in Galle Face announced that they would peacefully vacate the premises of the Presidential Secretariat.

Early in the morning on 22 July 2022, a large military contingent of approximately 2’000 accompanied by police forces raided Galle Face, clashing violently with the peaceful protestors, as well as with several journalists. A number of protestors, journalists and at least one lawyer were arrested and detained, while other lawyers attempting to access the area were prevented from doing so and assaulted by security forces. Those detained were also refused access to medical support.

In an emergency ordinance passed on 27 July 2022, the Parliament extended for another month the state of emergency declared by President Wickremesinghe, empowering security forces to arrest and detain protestors without due process, and the president to override existing laws with regulations dealing with unrest.

Violations against civil society representatives, human rights defenders and journalists

The journalists arrested during the dispersal of the 31 March 2022 protest were beaten at the Mirihana police station. Despite a complaint lodged with the Inspector General of Police (IGP), this ill-treatment continued till the visit by the Human Rights Commission of Sri Lanka (HRCSL) the next morning at around 11 am local time.

Furthermore, the IGP instructed the Criminal Investigation Department (CID) to initiate investigations against the private TV channel “Sirasa TV” that broadcasted live the protest and the violent altercations with the police.

In the wake of the 31 March protest, on 2 April 2022, the President Gotabaya Rajapaksa announced a nationwide state of emergency, including a 36-hour curfew starting from 6 pm that same day until 6 am local time on 4 April 2022, invoking public security necessity. The next day, the Telecommunications Regulatory Commission (TRC) announced that service providers had blocked social media platforms such as Facebook, WhatsApp, Instagram, Twitter, and YouTube based on a request from the Ministry of Defence, which triggered the resignation of the Chairman of the Information and Communication Technology Agency of Sri Lanka.

In addition, on 1 April 2022, a young social media activist who initiated the #GoHomeGota hashtag campaign was abducted from his house. After initially denying his presence in their custody, due to interventions by journalists, lawyers and the Human Rights Commission, the police acknowledged the activist's arrest and detention in Modara, under a state security provision of the Penal Code, specifically its section 120 (i.e. to "excite or attempt to excite feelings of disaffection to the State". He was brought before a Magistrate within less than 24 hours and released on bail. Another activist was also summoned for questioning by the police on 4 April 2022 in relation to a dissenting slogan displayed in his car.

On 15 April 2022, a dissident was reported to have been summoned to the police station for questioning based on a complaint from a local politician accusing him of covering a public banner about a local development project, with a poster stating that this project was accomplished with public money.

On 16 April 2022, some protesters who were shouting anti-government slogans were arrested and taken into custody in Wellawatte police station. They were subjected to cruel and degrading treatment before being released.

On 18 April 2022, the police submitted a "fact report" to the Fort Magistrate (case no. 21838/2022) concerning the protests at the Galle Face Green. The report stated that protesters had caused "inconveniences" to the public by occupying the road and pavement at the Galle Face Green, in addition to environmental damage due to the disposal of non-biodegradable items and the use of loudspeakers. The police report further indicated an aggressive behaviour by protesters in a potential breach to law and order.

On 9 July 2022, there were violent clashes between the police and the protestors assembled near the Prime Minister's residence, as officers beat both protestors and journalists covering the protests alike, injuring many.

On 22 July 2022, during the joint operation led by the military, police and special forces, thousands of armed forces stormed the protest site at Galle Face Green in an attempt to forcefully those camped there, injuring over 50 people and arresting nine. A number of journalists were also assaulted and injured by police forces during the operation.

On 25 July 2022, a magistrate court in Colombo slapped six leaders of the ongoing protests, including a trade union leader, with travel bans, on charges of allegedly participating in unlawful gatherings.

On 27 July 2022, police announced in separate statements they had arrested two individuals who had helped lead the protest movements, on charges of unlawful assembly.

While we do not wish to prejudge the accuracy and the veracity of the above-mentioned allegations, we are deeply concerned by the apparent excessive and lethal use of force by security forces against peaceful protesters across various cities in Sri Lanka, using tear gas, water cannons, and in some cases, live ammunition, resulting in

severe injuries of scores of protesters including journalists, and leading to the death of one protester. We are also deeply concerned at the allegations that live ammunition may have been used against protesters, as security forces should not resort to violence during peaceful protests. Should these allegations be confirmed, they would be in violation of international human rights law, in particular articles 6, 19 and 21 of the International Covenant on Civil and Political Rights (“ICCPR”), ratified by Sri Lanka on 11 June 1980.

We would like to respectfully remind your Excellency’s Government that peaceful assemblies may only be dispersed in exceptional cases, and lethal force may only be used against specific individuals to address an imminent threat of death, or serious injury, and is subject to strict requirements of necessity and proportionality, in situations where less harmful measures are manifestly ineffective to address the threat.

We recall that States have a positive obligation to ensure that certain human rights - including the absolute and non-derogable rights to life, to be free from torture and other ill-treatment, and not to be arbitrarily detained - continue to apply in all circumstances, including under emergency measures, while the restrictions to other rights need to be legal, necessary, proportionate, non-discriminatory, limited in duration and comprise key safeguards against excesses. Moreover, derogable rights that are intrinsically essential to the enforcement of non-derogable rights must be maintained (such as State obligations to ensure effective investigations through the protection of due process). We further recall that procedural rights that enable contestation, debate and review of emergency powers are critical to the protection of human rights, the protection of civic space and to sustaining tolerance, openness and human dignity in situations of emergency (A/HRC/37/52).

We further note with concern the subsequent declarations of emergency by the executive branch, despite the change in the presidency, in response to the country’s political, social and economic crisis. We respectfully remind your Excellency’s Government that States, when declaring a state of emergency, must apply the tests of legitimacy, proportionality and necessity. Each measure must be “targeted at a real, clear, present or imminent danger”, and Governments must ensure that they are not used to limit legitimate dissent, protest, expression and the legitimate activities of civil society. We remind your Excellency’s Government that in general, the ordinary law should be used to regulate political challengers. States must ensure that measures taken do not have an adverse impact on minorities and marginalized groups and do not affect identified religious, ethnic or social groups in a selective or discriminatory manner. (A/HRC/37/52, para. 28). States have an obligation to ensure that the procedural requirements of proclamation and notification of states of emergency are fully respected, as they provide an essential protection to prevent the misuse of exceptional powers.

We would like to raise further concerns over the reported arbitrary arrests and detentions of journalists and activists for the mere exercise of their legitimate rights to freedom of peaceful assembly and of expression. We respectfully remind your Excellency’s Government that any restriction on the freedom of expression or of information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). While noting that several of the protesters were

charged with offenses such as attempting to excite disaffection and unlawful gatherings, we recall that sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression as well as of peaceful association and assembly. We further express our concern about the alleged misuse of state security powers to limit the legitimate exercise of the rights to freedom of peaceful assembly and of association. Therefore, the arrest and detention for the peaceful exercise of rights protected by the ICCPR, such as freedom of expression and freedom of assembly and association, may be arbitrary. Protesters, including civil society representatives, journalists and human rights defenders, should not face criminal liability following their participation in peaceful protests, nor for exercising their right rights to freedom of opinion and expression, or merely exercising their profession, in the case of journalists. We are troubled by the use of emergency measures as reasons for dispersing and arresting protesters. States shall not invoke national security as a justification for measures aimed at suppressing opposition or to justify repressive practices against its population (A/61/267, para. 20). Moreover, we wish to remind your Excellency's Government to ensure the procedural guarantees for persons in the determination of any criminal charges against them, as stipulated by article 14 of the ICCPR, notably to be informed of their rights, to access a lawyer, contact their family and other legal and procedural safeguards to ensure that detained individuals are not subjected to ill-treatment.

Law enforcement officials may not use greater force than reasonably necessary. The acts of violent individuals should not be attributed to other participants of the assembly, and such violent conduct does not suffice to declare the whole assembly as non-peaceful. This, and all other allegations of violence, should be investigated in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, with the aim to ensure that those responsible are brought to justice, promote accountability and prevent impunity, avoid denial of justice and repeated violations. Investigations should explore, *inter alia*, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.

Finally, we are deeply concerned by the internet shutdowns and other communication services disruptions which directly infringe on the right to the freedom of opinion and of expression, and could prevent the prompt, independent and thorough documentation of allegations of human rights violations as well as limiting all forms of business and economic activity. We would like to respectfully draw your Excellency's Government's attention to the fact that States should not respond to crisis situations by adopting additional restrictions on the freedom of opinion and expression, except as strictly justified by the situation and international human rights law. Any such restriction must be provided for by law, serve to protect a legitimate interest recognized under international law, and be proportional and necessary to protect that interest. Access to information and communication services is particularly crucial at times of protests, as the restriction or blocking of access to Internet services could adversely affect the enjoyment of the rights to freedom of expression and of assembly, as well as severely affect protesters demands' regarding economic and social rights. We would like to remind your Excellency's Government, that the complete shutdown of the internet and telecommunication networks would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on

freedoms of expression and of peaceful assembly and of association, as enshrined in article 19(3) of the ICCPR.

We are issuing this appeal in order to safeguard the rights of those detained – as well as those whose fate and whereabouts are currently unknown - 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, including on the allegations of the use of indiscriminate force against protesters and the circumstances of the killing and injury of protesters.
2. Please provide the details, and where available, the results, of any investigation and judicial or other inquiry undertaken in relation to the above allegations of unlawful death, ill-treatment, and arbitrary detention reported in the context of the protests, including violations against journalists and civil society activists. Please explain whether they were conducted in compliance with international standards, particularly the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
3. Please further provide the full list and details of all those arrested at the recent protests, as well as details on whether the arrested individuals were released or are currently detained. Please provide information on the legal bases of the above-mentioned arrests and detentions, whether any charges have been brought against the individuals detained, keeping in mind international human rights standards.
4. Please indicate what measures were taken to ensure that any use of force by security forces during the above-mentioned protests would only be used against specific individuals to address an imminent threat of death, or serious injury, keeping in mind international human rights standards and the need to avoid unnecessary harm. Please provide further information on any investigations that have taken place or are planned into these allegations of excessive use of force by police and armed forces.
5. Please indicate how the state of emergency in force respects the principles of proportionality and necessity. In addition, please indicate what measures your Excellency's Government has taken to ensure that it does not affect certain groups in a selective or discriminatory manner, particularly indigenous groups.

6. Please indicate which measures have been or are being taken to ensure accountability for the unlawful acts committed while policing assemblies, including the use of force, notably at the commandant level.
7. Please provide information on which measures have been taken to open avenues for dialogue with peaceful protestors and address their legitimate claims regarding political and economic reforms to mitigate the impact of the economic crisis.

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.

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. With regard to the persons detained during the protests and currently deprived of their liberties, please ensure to take all necessary measures to avoid any irreparable harm to their life or personal integrity.

We will publicly express our concerns in the near future, as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether a deprivation of liberty was arbitrary or not. The present communication in no way prejudices 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.

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

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Saad Alfarargi
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Irene Khan

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

José Francisco Cali Tzay

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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 above alleged facts and concerns, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case. We would first like to recall article 20 (1) of the Universal Declaration of Human Rights which states that "[e]veryone has the right to freedom of peaceful assembly and association". We would further like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Sri Lanka on 11 June 1980, which guarantee the rights to freedom of expression and opinion and freedom of peaceful assembly respectively. Article 21 states that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".

The Human Rights Committee further stated that "[a]rticle 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches" (CCPR/C/GC/37, para. 6). The Human Rights Committee had previously indicated to your Excellency's Government that it "should effectively guarantee and protect the freedom of peaceful assembly and avoid restrictions that do not respond to the requirements under article 4 of the Covenant. In particular, it should refrain from imposing detention on individuals who are exercising their rights and who do not present a serious risk to national security or public safety" (CCPR/C/THA/CO/2, para. 40).

We would like to remind your Excellency's Government the views expressed by the Human Rights Council noting that States must "refrain from imposing restrictions which are not consistent with paragraph 3 [of article 19 of ICCPR], including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups" (A/HRC/RES/12/16, para. 5 (p) (i)). Moreover, The Human Rights Committee indicated that "restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government (CCPR/C/MDG/CO/4, para. 51), challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs" (CCPR/C/GC/37, para. 49).

Furthermore, as expressed by the Human Rights Committee in its General Comment no. 34, "A free, uncensored and unhindered press or other media is essential

in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights” (para. 13). The Committee also stated that “the penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression” (para. 42). Furthermore, and as generally held, attacks against individuals for the exercise of their right to freedom of expression is incompatible with the Covenant, and any such attacks should be subject to independent and impartial investigations (para. 23).

We would further like to recall that the Special Rapporteur on the right to freedom of peaceful assembly and of association has stressed in a report (A/HRC/20/27), that States have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to facilitate the exercise of the right to freedom of peaceful assembly. The law only protects assemblies that are not violent and where participants have peaceful intentions, and that shall be presumed. Therefore, acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (para. 25) (A/HRC/23/39, para. 49). We therefore remain concerned with regards to the allegations that the violence that occurred during peaceful assemblies was engendered by acts from protesters, as this contravenes international human rights laws and standards.

We would also like to recall that “[t]he principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies (principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary)” (A/HRC/31/66, para. 59). Moreover, “[f]irearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (see A/HRC/26/36, para. 75). Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle (ibid., para. 70)” (A/HRC/31/66, para. 60). We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which provides that, “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”. In its General Comment n° 37, the Human Rights Committee stated that wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose, and that, as a general rule, the military should not be used to police assemblies (para. 97). The Committee further noted that only in exceptional cases may an assembly be dispersed (para. 96). This may be the case if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence, but in all cases the rules on the use of force must be strictly followed.

We would further like to recall that in its General Comment n. 37, the Human Rights Committee emphasized the importance of the role of journalists, human rights

defenders and others involved in monitoring, including the documenting of or reporting on assemblies, and that they may not be prohibited from exercising these functions, also in respect of the actions of law enforcement officials (para. 34).

In relation to the allegations of restrictions on access to justice for protesters, we would like to remind your Excellency's Government that "[a]ccess to justice, the rights to freedom of peaceful assembly and association, and the strengthening of civic space are inextricably linked" and that "barriers to access to justice should never be placed as deterrence measures undermining the essence of other rights" (A/HRC/47/24, paras. 20 and 22).

In previous reports, the mandate holder has recognized that digital technology is integral to the exercise of the rights of peaceful assembly and association [A/HRC/20/27 and A/HRC/38/34]. Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised [A/HRC/29/25/Add.1, para. 53]. Indeed, such technologies are important tools for organizers who seek to mobilize a large group of people in a prompt and effective manner, and at little cost, and also serve as online spaces for groups of people that are marginalized by society and are confronted with restrictions when operating in physical spaces [A/HRC/35/28]. The mandate holder has called upon States to ensure that everyone can access and use the Internet to exercise these rights, and that online associations [A/HRC/20/27, para. 52] and assemblies [A/HRC/29/25/Add.1, para. 34] are facilitated in accordance with international human rights standards. The Human Rights Council has recognized that although an assembly has generally been understood as a physical gathering of people, human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online [A/HRC/RES/38/11]" (A/HRC/41/41, para. 11).

While these rights are not absolute, the freedom to access and use digital technologies for the exercise of peaceful assembly and association rights should be viewed as the rule, and the limitations as the exception. The general norm should be to permit the open and free use of the Internet and other digital tools [A/HRC/23/39, para. 76]. Resolution 15/21 of the Human Rights Council makes it clear that to be permissible restrictions should be 'prescribed by 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' [A/HRC/RES/15/21]. Where such restrictions are made, 'States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right' [General Comment n°31, para. 6]" (A/HRC/41/41, para. 12).

The complete shutdown of the internet and telecommunication networks would appear to contravene the fundamental principles of necessity and proportionality that must be met by any restriction on freedom of expression. Shutdowns fail to reach the established test for restrictions to the right to freedom of opinion and expression under article 19(3) of the ICCPR, as well as for restrictions on the freedom of peaceful assembly and of association under articles 21 and 22(2) ICCPR. The UN General Assembly (A/RES/73/173) and the Human Rights Council (A/HRC/RES/38/7) have

called upon States to refrain from implementing internet shutdowns and to ensure internet is available at all times, including during peaceful protests (A/HRC/RES/44/20). The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that "[t]o ensure effective implementation of the prohibition of shutdowns, the legal system must ensure that victims of shutdowns can obtain redress and exercise an enforceable right to a remedy" (A/HRC/47/24/Add.2, para. 45).

We wish to draw the attention of your Excellency's Government to article 9 of the ICCPR, whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. With reference to the jurisprudence of the Working Group on Arbitrary Detention, we wish to recall that the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights, such as freedom of opinion and expression, as well as assembly and association and participation in public affairs (see also CCPR/C/GC/35, para. 17). We also recall that a deprivation of liberty is considered arbitrary when it constitutes a violation of international law on the grounds of discrimination, including discrimination based on the status of an individual as a journalist or a human rights defender. We further wish to remind your Excellency's Government that enforced disappearances violate numerous substantive and procedural provisions of the ICCPR and constitute a particularly aggravated form of arbitrary detention (see CCPR/C/GC/35, para. 17).

Furthermore, we wish to draw the attention of your Excellency's Government to a recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16), where the Working Group reiterated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty (paragraph 50). The right to legal assistance must be ensured from the moment of deprivation of liberty and across all settings of detention, including, *inter alia*, criminal justice and administrative detention (paragraph 51). Legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (paragraph 53).

Finally, we would like to highlight that "neither preventive detention nor preventive identity controls, including stop and search, should be used to create a chilling effect on the right to freedom of peaceful assembly or to criminalize protesters" (A/HRC/47/24, para. 51), and that "necessary law enforcement measures targeted against specific individuals are preferred and, as far as possible, only towards people linked directly to violence, as such arrests might also be considered violations to freedom from arbitrary detention and freedom of movement CCPR/C/GC/37, para. 84)" (A/HRC/47/24, para. 55).

In its General Comment No. 37, the Human Rights Committee noted that the preventive detention of targeted individuals, in order to keep them from participating in assemblies, may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly (para. 93). It may be done only in exceptional cases and where the authorities have actual knowledge of the intent of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other

measures to prevent violence from occurring will clearly be inadequate. Practices of indiscriminate mass arrest prior to, during or following an assembly, are arbitrary.

Furthermore, we draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 9, 10, 11 and 12 relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. Article 13 outlines an obligation of the State to protect all persons involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, against ill-treatment, intimidation or reprisal. We also recall article 17 of the Declaration stipulating that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified.

In accordance with their humanitarian obligations, States should ensure that search efforts are promptly initiated to determine the fate and whereabouts of disappeared persons.¹

In its report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3), the Working Group on Enforced or Involuntary Disappearances has recommended that States: define enforced disappearance as an autonomous crime in national legislation and establish different modes of criminal liability, including abetting, instigating, acquiescing and actively covering up an enforced disappearance, as well as criminal liability for command or superior responsibility; and create mechanisms that can promptly receive and process complaints of enforced disappearances, under the responsibility of authorities who are independent of the institutions to which the alleged perpetrators belong or may be linked. These mechanisms should be empowered to trigger prompt investigations of the complaints received.

We would 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 articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national

¹ Guiding principles for the search for disappeared persons:
<https://www.ohchr.org/EN/HRBodies/CED/Pages/Guiding-Principles.aspx>

and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 12, paragraphs 2 and 3, 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 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.

Furthermore, we would also like to refer your Excellency's Government to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2007 (A/62/225, paras. 91 and 93), which underlines the importance of human rights monitors during demonstrations in providing an impartial and objective account of what takes place and in deterring human rights violations.

We also wish to refer your Excellency's Government to articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Sri Lanka ratified to on 3 January 1994, and which stipulate that no exceptional circumstances, including internal political instability or any other public emergency, may be invoked as a justification of torture, and that each State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment of punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official. Furthermore, we wish to refer to articles 12 and 13, which state that when there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, State parties will conduct a prompt and impartial investigation, and ensure that the same is guaranteed for any individual who alleges he has been subjected to torture. Steps shall also be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and article 7 of the International Covenant on Civil and Political Rights (ICCPR). The obligations to investigate, identify those responsible for acts of torture and ill-treatment and bring them to justice arise also under articles 7 and 12 of the CAT. In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.

We further recall states’ obligation to take all necessary measures to ensure that the rights of human rights defenders are not impinged upon under the guise of national security in retaliation for their lawyering, reporting, and other human rights-related activities. We have noted with concern that globally, there is an increasing trend of human rights defenders who express views contrary to the official position of the State to face charges related to terrorism or “threats to national security” (A/HRC/40/52). The Human Rights Council has stressed the need to ensure that national security is not used to unjustifiably or arbitrarily restrict the right to freedom of opinion and expression (A/HRC/7/36). Legitimate expression of opinions or thoughts must not be criminalized. Measures aimed to regulate the existence and work of civil societies and human rights defenders must comply with the requirements of proportionality, necessity, and non-discrimination. In particular, we would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism’s (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders. Any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that national security or counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offense.

Finally, we remind Your Excellency’s Government that although article 19(3) of the ICCPR recognizes “national security” as a legitimate aim, national security considerations should be “limited in application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a government, regime, or power group” (A/71/373). States should “demonstrate the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight” (A/71/373). We further refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international

law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.