

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 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**

Ref.: AL LKA 5/2022  
(Please use this reference in your reply)

16 January 2023

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; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; 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 50/17, 51/8, 45/3, 44/5, 49/13, 34/3, 43/4, 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 continuing use of excessive force against protesters participating in ongoing demonstrations in August and September 2022**. The demonstrations are in response to the previous excessive force used by security forces against protesters, as well as the continuing economic and financial issues arising from fiscal mismanagement of the debt crisis in Sri Lanka. We would also like to bring to your attention the reported **ongoing detention of two protesters, Mr. Wasantha Mudalige and Mr. Galwewa Siridhamma Thero, and the previous detention of Mr. Hashan Jeewantha, under the Prevention of Terrorism Act (PTA)**, seemingly for the legitimate exercise of their rights to freedom of expression, association and peaceful assembly, and related concerns about their treatment in detention and their restricted access to legal representation and their families.

While acknowledging that the state of emergency is no longer in force as of the date of this letter, we have previously expressed concerns over the recent crackdown on protestors, as well as over the fiscal mismanagement of the debt crisis, in a communication dated 3 August 2022 (LKA 2/2022) and press releases dated 8 April 2022 and 20 July 2022 respectively. We regret that to date we have not received a response to the communication or press releases. We urge your Excellency's

Government to do your utmost to reply to our communication as the lack of reply could be seen as a lack of cooperation with UN special procedures.

According to the information received:

#### *18 August 2022 Protest*

On 18 August 2022, the Inter University Students Federation (IUSF) organized a protest, as a continuation of previous protests, against economic mismanagement in Sri Lanka resulting in a debt crisis and the problems this has caused for the population, as well as to condemn the repression of peaceful protests and the closure of universities. The organizers had not informed the authorities of the protest; however, no court order had been issued either ordering that the protest could not take place. The protest began at Lipton Circus in the city of Colombo and marched along Union Place. The protesters were peaceful, with participants carrying banners and musicians at the front of the demonstration playing music to accompany the chants of the protesters. The police were deployed in large numbers along the route of the protest, both on foot and in buses. The police also formed human barriers in order to block the path of the protesters.

After walking for approximately two kilometres along the planned protest route, the protest stopped as it had been blocked by a human barrier formed by police officers. The police made an initial announcement to the procession that, under a police ordinance, the protest was not allowed as they had not received notification at least six hours prior to the protest. The police then began to use water cannons and tear gas against the protesters in order to disperse the protests. Police officers also reportedly chased and hit protesters with batons. The police reportedly detained 20 individuals that day. All but four individuals were released the following day, 19 August 2022.

#### *Detention of Protesters under Prevention of Terrorism Act*

On 18 August 2022, Mr. Wasantha Mudalige, Mr. Galwewa Siridhamma Thero and Mr. Hashan Jeewantha, were three of the individuals detained by police officers for participating in the above-mentioned demonstration. The police detained Mr. Mudalige and Mr. Jeewantha at Gaspaha Junction after chasing them in police vehicles, while the police detained Mr. Siridhamma Thero at Borella. Mr. Mudalige and Mr. Jeewantha were taken to Peliyogoda Police Station and Mr. Siridhamma Thero was taken to Fort Police. On 21 or 22 August 2022, Mr. Siridhamma Thero was taken to Peliyogoda Police Station. The three individuals were reportedly held for over 73 hours without being produced before a Magistrate, in contravention of the Criminal Procedure Code. The authorities did not produce a detention order within 72 hours as required under the Prevention of Terrorism Act. The individuals were also not given access to lawyers immediately after their detention, as the authorities only provided initial access to lawyers late at night on 18 August, nor did the authorities provide accurate information about the fate and whereabouts of the detainees immediately upon deprivation of liberty.

On 22 August 2022, at around 9:00 a.m., lawyers for Mr. Mudalige, Mr. Siridhamma Thero and Mr. Jeewantha raised their concerns with the Human Rights Commission of Sri Lanka that the students could not be found at Peliyogoda Police Station. The authorities had failed to acknowledge the deprivation of liberty and clarify the fate and whereabouts of the detainees. The police claimed that the individuals were taken to the Terrorism Investigation Department (TID) under a detention order, however the TID stated that the students were not in their custody and were not aware of a detention order after lawyers raised an official request with the department. At around 6:00 p.m. the same day, detention orders were issued against Mr. Mudalige, Mr. Siridhamma Thero and Mr. Jeewantha under section 9 of the Prevention of Terrorism Act (PTA). However, only Mr. Siridhamma Thero's arrest receipt specifically mentioned the PTA as the basis for the arrest. No specific charges were laid against the other individuals.

After the issuance of the detention orders, Mr. Mudalige, Mr. Siridhamma Thero and Mr. Jeewantha were taken to Tangalle Detention Centre in Tangalle. The centre is an abandoned prison, with its external perimeter controlled by the Sri Lankan Navy while plain clothes intelligence officers from the TID control the inside of the facility. It is reportedly dilapidated to the extent it is unsafe for human habitation. Mr. Mudalige, Mr. Siridhamma Thero and Mr. Jeewantha have also been frequently taken to Colombo for interrogation at the TID office in Narahenpita. In addition, Mr. Mudalige had been regularly blindfolded and taken at night from these detention centres to different unknown locations in and near Colombo and interrogated. Based on his interrogation, it is alleged that Mr. Mudalige could be framed for arson attacks carried out on 9 May 2022 and the death of a member of parliament.

In both Tangalle and the Narahenpita facilities, the individuals were reportedly held in separate small, dark, windowless cells in solitary confinement. The individuals were also denied adequate bathing and other hygiene facilities, while food provided was reportedly below adequate standards. The relatives of the individuals were only allowed to send packaged food, with even this allowance being blocked by long delays in giving it to the students.

Mr. Mudalige, Mr. Siridhamma Thero and Mr. Jeewantha reportedly had limited and hindered access to their lawyers and family members during their detention. Their lawyers were permitted to visit once a week, but had to request permission from the TID each time they wished to visit. TID approval had reportedly been denied or delayed after certain requests. For over a week at the beginning of their detention, the individuals were not provided access to their lawyers. Initially, only one lawyer was given access to visit the individuals, however, after several challenges, two lawyers were permitted to visit many weeks later.

On 7 October 2022, Mr. Jeewantha was released from detention unconditionally. The other two individuals remained in detention. No reason was given for the continued detention of the other two individuals.

Families were allowed to visit, albeit under challenging conditions. Regarding Mr. Mudalige, his family had to travel over 200 kilometres from their home to visit him in both Colombo and Tangalle. Visits had to be approved by the TID and relatives had to show they are “blood relatives” as certified by a *Grama Sevaka* (local government officer). Furthermore, the movement of the individuals between two different detention centres created problems for visits. For example, a relative of Mr. Mudalige presented himself for a visit in Tangalle on one occasion, only to be informed that he was not there and had been taken to Colombo. When the relative then went to Colombo to see Mr. Mudalige, officials told him he could not see him because Mr. Mudalige’s file was in Tangalle. The administrative obstacles and economic difficulty in travelling long distances to see their relatives made family visits difficult.

Mr. Mudalige and Mr. Siridhamma Thero are also reportedly suffering from health conditions that are not being properly treated. On 25 October 2022, Mr. Siridhamma Thero had reportedly been hospitalized for dengue fever, which caused low platelets, low blood pressure and severe dehydration. On 29 October 2022, he was discharged from hospital, reportedly before having fully recovered. He returned to the TID office in Narahenpita, where he did not have proper aftercare, including nutrition. He continued to have body aches, had no appetite, and felt weak. Mr. Mudalige was reportedly suffering from a bad rash on his leg and behind one of his ears for over three weeks. It is believed the rash had been caused by a lack of sunlight and exposure to the outdoors. It is understood he had been taken to a skincare clinic for the rash on 2 November 2022.

### *30 August 2022 Protest*

On 30 August 2022, the IUSF organized another protest in the area of Colombo 10. The proposed route of the procession was from Elphinstone Theatre to Fort Railway Station via Olcott Mawatha. The organizers did not inform the authorities of the protest ahead of time or seek permission. However, like on 18 August, there was no court order prohibiting the protest. Before the protest could begin, protesters were met with police forming a human barrier preventing the demonstration from commencing. The police made an announcement via a loudspeaker that the protest was illegal as organizers had not given notice of the demonstration six hours in advance. The protesters made clear to the police that they did not want a confrontation and decided to turn 180 degrees and march in the opposite direction of their planned route. The protesters carried banners and chanted protest slogans demanding an end to the suppression of protesters and the release of individuals detained for protesting, including the three student leaders. After walking for approximately one kilometre, the police formed another human barrier and began to advance on the protesters. In response, protesters sat on the ground in order to avoid a confrontation. The police began to fire tear gas and water cannons at the protesters to disperse the protest. Police then chased protesters along the road and made detentions of 28 individuals, including a 17-year-old boy who was allegedly detained in a cell with adults for six hours. All 28 individuals were released the next day.

### *18 September 2022 Rally*

On 18 September 2022, the IUSF organized a rally that took place in Hyde Park in Colombo. The IUSF obtained a sound permit from both the police and the municipal government for this purpose. The rally to a seated crowd included speeches, which raised the issues of repression of protests and the way forward for the movement, and musical entertainment. While the rally took place without a response from the authorities or detentions, heavy police presence was deployed around the park and water cannons were also placed near the location. No significant incidents were reported.

### *24 September 2022 Protest*

On 24 September 2022, the Socialist Youth Union (SYU) informed the nearest police station of their intention to hold a protest, starting from the town hall at Lipton Circus in Colombo. The protest route proceeded a few kilometres towards Union Place. The police were deployed along the protest route in large numbers. The police announced during the protest that it was illegal as the organizers had not given notice to the police six hours in advance, even though the organizers had done so. After walking approximately one kilometre, the police started to form a human barricade and to advance on the protesters. The police then reportedly fired tear gas and water cannons to disperse the protesters and chased protesters and arrested them. Police reportedly hit protesters with batons while others were injured falling to the ground from the force of the water cannons. Six individuals were hospitalized, with five of these individuals being discharged the next day. One person who was hospitalized was reportedly in need of critical treatment due to head trauma. The individual remained in hospital for two weeks and suffered memory loss. The individual still experiences discomfort but has largely recovered. 85 protesters, including two children aged 14 and 17 years old respectively, were detained and taken to police stations. The 14-year-old was discharged the same evening, with the remaining individuals released the next day.

### *4 October 2022 Protest*

On 4 October 2022, the IUSF organized a joint rally against repression to be held in Kiribathgoda. The IUSF had paid for and booked a venue from the local government authorities for this purpose. However, the day before the rally, police refused permission for the rally to take place. The organizers went ahead with the rally as planned. The protesters were met with the police along the protest route, who reportedly warned that the protest was illegal and needed to stop. After the protesters did not disperse, the police used water cannons and tear gas against the peaceful demonstration. One individual was reportedly detained.

### *18 October 2022 Protest*

On 18 October 2022, the IUSF organized a protest to mark the sixtieth day of detention of Mr. Mudalige and Mr. Siridhamma Thero. Protestors also gathered to express discontentment against the rising cost of living, unfair taxation and

repression by the state. The protest began at Kelaniya University. After walking for approximately one kilometre, the protest was stopped on Kandy Road, where hundreds of police had formed a human barricade. The law enforcement officials were equipped with water cannons and tear gas. A long standoff ensued between the student protestors and the police for up to one hour, with the students keeping a distance from the police barricade. After one hour, the police charged at the students and made eight detentions. However, the authorities failed to inform the families or legal representatives about their whereabouts promptly upon depriving their liberty, which was unknown for over an hour, with lawyers and students unable to find the detainees in the local police stations. After the Human Rights Commission of Sri Lanka was informed that the whereabouts of the detainees was unknown, they were traced to the Wattala Police Station. Lawyers and students had previously been informed that the eight detainees were not there. The detained students were produced before the courts shortly afterwards. On 19 October, all eight were released on bail. The individuals were reportedly charged with “unlawful assembly”. The case against them is reportedly continuing.

#### *15 November 2022 Protest*

On 15 November 2022, members of civil society, trade unions and the general public participated in a protest outside a TID office in Colombo. A heavy police presence met the protesters, including riot police and special task force officers, as well as police trucks and a water cannon. The protesters held a peaceful demonstration on the pavement near the office. Near the end of the demonstration, the police disrupted the protest, claiming that the protesters did not have permission to use a megaphone. This claim caused a verbal confrontation between police and protesters, although the protesters decided to end the demonstration at this point. Despite ending the protest, police proceeded through the crowd and confiscated the megaphone before taking it into the TID office. This action upset the protesters, after which the protesters dispersed.

#### *Court Hearings concerning Mr. Mudalige and Mr. Siridhamma Thero*

On 4 November 2022, a Supreme Court hearing concerning Mr. Mudalige and Mr. Siridhamma Thero took place in Colombo. On 28 October 2022, the Tangalle Magistrate Court had directed the TID to submit a progress report of their investigation into the two detained individuals and a summary of the evidence. At the 4 November hearing, a TID officer claimed to the court that, as Mr. Mudalige and Mr. Siridhamma Thero were being investigated under the PTA, the TID was not bound to provide such reports. Lawyers for the two individuals argued against this position, stating no privilege had been given that allowed the TID to avoid usual criminal procedure norms of the court, which states that such an investigation progress report and summary of evidence should be submitted if there is an investigation. The court decided to adjourn the hearing until 11 November 2022 at which time the TID was asked to submit the aforementioned documents to the court.

On 10 November 2022, the Supreme Court held a hearing concerning a fundamental rights petition brought on behalf of Mr. Mudalige. The court

instructed and issued interim orders that lawyers and relatives of the detained be permitted reasonable access to them, that the detainees should be produced before relevant magistrate courts immediately in terms of the law, and to submit the detainees to an examination by a judicial medical officer without delay. A fundamental rights petition on behalf of Mr. Siridhamma Thero was due to be heard on 11 December 2022. The date of the hearing was further delayed on 13 December 2022 as counsel for the authorities had not received instructions on how to respond and police named to appear did not do so. A new date was given for 13 February 2023. Concerning Mr. Mudalige's fundamental rights petition case, a new date has been put forward for 31 January 2023 for his hearing.

On 14 November 2022, Mr. Mudalige was presented to the Tangalle Magistrate Court following the Supreme Court order on 10 November. The TID brought him to the court with his head covered with a bed sheet. When the magistrate asked the TID officers why Mr. Mudalige was brought to the court with his head covered, the officers stated it was because he was going to be part of an identification parade in other cases. However, when asked what these other cases were, the TID officers were unable to answer with specific detail. Mr. Mudalige was produced before a judicial medical officer for examination on 16 November 2022. The report of the officer stated that no significant health issues had been found.

On 17 November 2022, on the ninetieth and last day of the original PTA detention order, the Colombo Additional Magistrate ordered that Mr. Mudalige and Mr. Siridhamma Thero be remanded under judicial authority under section 7 of the PTA. While technically the judicial remand order could be until the end of a possible trial, it is understood the current remand order would continue until instructions from the Attorney-General are received. No deadline or timeline was provided for when the Attorney-General's instructions would be received. While under judicial remand, the TID will need to produce evidence justifying the two individuals' continuing detention every two weeks. The court could decide to release them on bail if it was not convinced continued detention was justified. Mr. Mudalige and Mr. Siridhamma Thero were moved to a regular remand prison, the Colombo Remand Prison, as their place of detention. The two individuals were moved to this location in secret, without informing their lawyers or family for a period of less than 24 hours.

On 23 November 2022, the department of the Attorney General issued an ex-parte motion granting bail to Mr. Siridhamma Thero. His two sureties signed a personal surety bail amount of 500,000 Sri Lankan rupees (approximately 1,366.00 USD). Other bail conditions included a travel ban preventing him from leaving Sri Lanka, a prohibition on him speaking to the media on his case and a requirement to appear before the CID once a month. Mr. Siridhamma Thero was also warned not to conduct himself "violently" or he would risk having his bail cancelled and being returned to custody.

Immediately after being granted bail, Mr. Siridhamma Thero was taken covered in a sheet to Kaduwela Magistrate Court by police, in connection with a previous protest on 10 June 2022 by the IUSF outside the Education Ministry. During this protest, students were blocked from entering the Education Ministry to raise

their concerns with the Minister of Education concerning student membership abolition and incidents at Ruhuna and Kelaniya universities. During the protest, the students tried to open the gate to the Ministry, which resulted in one side of the gate breaking down. The gate was reportedly already damaged before the protest. Mr. Siridhamma Thero had been brought to court having been accused of “destruction of public property” in relation to this protest. The court remanded him in custody as Colombo Remand Prison until 6 December 2022 in order to be produced before an identification parade in the Education Ministry protest case. On 6 December 2022, Mr. Mudalige was released on bail further to a court decision. Other individuals charged in this case are not in detention and are currently out on bail.

On 12 December 2022, the Attorney-General was expected to give instructions on the bail of Mr. Mudalige. However, the Attorney-General did not submit a motion for bail on this date. On 13 December 2022, following the non-submission, lawyers for Mr. Mudalige asked a magistrate court for a date to submit a motion to stop his continued detention under the PTA. The lawyers argued that no evidence has yet been presented to demonstrate why Mr. Mudalige continues to be held under the PTA. The Attorney-General argued that the TID needed more time to investigate. The judge reportedly reprimanded the Attorney-General for delaying the case, and that it either needed to provide evidence on why Mr. Mudalige should continue to be detained under the PTA or agree to him being released on bail on 17 January 2023.

#### *Harassment and intimidation of protesters*

Besides the reported use of force against peaceful protests and arbitrary detention of peaceful protesters, we have also received information of continued harassment and intimidation of protest organizers and participants by the authorities. Police records reportedly indicate that over 3,000 detentions have occurred. At least 20 activists have also reportedly been called for questioning by the TID. The summons did not give reasons for the call for questioning. The individuals called have made a written request seeking clarification on the purpose of the summons.

On 23 November 2022, the President of Sri Lanka said in a speech before the parliament that people can protest, but they must receive permission from the police and must not congest roads. He stated that you cannot protest without a permit. The President claimed that there was another movement coming to try to change the government. He stated he would not allow that and that he would use the military and put in place a state of emergency to stop it.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are deeply concerned by the apparent continued use of excessive force by security forces against peaceful protesters across various cities in Sri Lanka, using tear gas, water cannons and batons, resulting in injuries of protesters. We are also concerned that protests are being stopped or prevented for not having permission from the authorities to hold such demonstrations, without seemingly a legitimate reason for their limitation. We regret that the authorities allegedly held the detainees in incommunicado detention and failed to either acknowledge the detention or provide



accurate information to their families or legal representatives regarding their whereabouts and wellbeing. We wish to recall that under international law, the failure or refusal to acknowledge a deprivation of liberty by State agents are constitutive elements of an enforced disappearance regardless of the duration of the deprivation of liberty or concealment concerned.

Should these allegations be confirmed, they would be in violation of international human rights law, in particular articles 7, 9, 19 and 21 of the International Covenant on Civil and Political Rights (“ICCPR”), ratified by Sri Lanka on 11 June 1980, as well as articles 9, 10, 11, 12 and 13 of the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearances and articles 12, 17 and 18 of the International Convention for the Elimination of Enforced Disappearances, ratified by Sri Lanka on 25 May 2016. 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 in self-defence or in defence of others against imminent threat of death or serious injury, and is subject to strict requirements of necessity and proportionality. In carrying out their duties, law enforcement officials shall, as far as possible, make use of non-violent means before resorting to the use of force or firearms and only if other means appear ineffective or without any promise of achieving the intended result. In line with our previous communication (LKA 2/2022) 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 would like to raise further concerns over the reported arbitrary arrests and detentions of protesters for the mere exercise of their legitimate rights to freedom of peaceful assembly and expression. We note that, despite the various concerns expressed by the High Commissioner and several Special Procedures experts in recent years regarding the incompatibility of the counterterrorism legislation with international human rights standards<sup>1</sup> and the recent amendments to the PTA, allegations of the misuse and abuse of the counterterrorism legislation prevail. We further note with concern that the PTA continues to be used to criminalise political dissidents, human rights defenders, as well as persons peacefully exercising their rights to freedom of expression, as well as association and peaceful assembly. We are particularly concerned that the PTA, as amended, has not adequately addressed our various concerns regarding the extremely broad and vague nature of the acts covered by the PTA. We further express concern in relation to section 9 of the PTA, as amended, which was reportedly used to detain Mr. Mudalige and Mr. Siridhamma Thero, as it allows for the detention “[w]here the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity” for up to 12 months. We are concerned that the amendments to the PTA do not sufficiently address the lack of procedural safeguards

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<sup>1</sup> LKA 5/2018; LKA 1/2019; LKA 4/2020; LKA 2/2021; LKA 7/2021; LKA 2/2022; <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>; A/HRC/45/45/Add.1; A/HRC/40/52/Add.3 A/HRC/44/50/Add.1; A/HRC/48/60/Add.2; A/HRC/39/45/Add.2; A/HRC/39/45/Add.2; A/HRC/39/45/Add.2 A/HRC/51/5

during the arrest and detention of individuals, which, in our view, could lead to arbitrary detention. Furthermore, we draw the attention of your Excellency's Government to the lack of judicial oversight during detention, which is limited only to situations under articles 126, 140 and 141 of the Constitution (section 10 PTA, as amended). We draw your attention to the recommendations of the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism concerning revisions to the PTA (A/HRC/40/52/Add.3) including the broad and vague definition of terrorism contained therein.

While noting that several of the protesters were charged with offences, we recall that sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression as well as of association and peaceful assembly. Misuse of sanctions against individuals exercising these rights risks a possible chilling effect, which will prevent others from exercising these rights for fear of being arrested or charged with a crime by the authorities. 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 and human rights defenders, should not face criminal liability following their participation in peaceful protests, nor for exercising their rights to freedom of opinion and expression. 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.

We are concerned that on 18 August, 30 August, 24 September and 4 October 2022, law enforcement used force in order to disperse reportedly peaceful protests, namely by using tear gas, water cannons and batons. 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 Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and 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.

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.

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

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 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 ill-treatment and arbitrary detention, including incommunicado detention and enforced disappearance reported in the context of the protests, including violations against civil society activists. Please explain whether they were conducted in compliance with international standards, particularly the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
3. Please further provide the full list and details of all those detained at the recent protests, including Mr. Mudalige, Mr. Siridhamma Thero and Mr. Jeewantha. Please provide information on the legal bases of the above-mentioned arrests and detentions, including the continued detentions of Mr. Mudalige and Mr. Siridhamma Thero under the Prevention of Terrorism Act, whether any charges have been brought against the individuals detained, and the legitimacy of these actions given international human rights standards.
4. Please provide information concerning the conditions of Mr. Mudalige and Mr. Siridhamma Thero in detention, including their physical and mental well-being and access to medical care. Please also inform us on the fundamental safeguards granted to them since their arrest and throughout their detention, including their access to legal representation and their families.
5. 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 in self-defence and defence of others against imminent threat of death, or serious injury, pursuant to international human rights standards notably the obligation to prevent unnecessary harm. Please indicate the measures taken, or foreseen, to ensure the prevention of excessive use of force in future protests. Please provide further information on any investigations that have taken place or are planned into these allegations of excessive use of force by police.

6. Please indicate which measures have been or are being taken to ensure accountability for the alleged unlawful acts committed while policing assemblies, including the use of force, notably at the commandant level, and to ensure the protection of protesters from enforced disappearances, including any existing safeguards.
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, including on how your Excellency's Government intends to guarantee the right to freedom of expression and freedom of peaceful assembly and association in the context of protest movements.

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 including measures to ensure they can access medical care, their lawyers and their families.

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.

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

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

Aua Baldé  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Michael Fakhri  
Special Rapporteur on the right to food

Attiya Waris  
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

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

Livingstone Sewanyana  
Independent Expert on the promotion of a democratic and equitable international order

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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 9, 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 liberty and security, 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).

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).

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. 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. 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.

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).

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 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 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 the International Convention on the Protection of All Persons from Enforced Disappearances, 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).

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 in article 3 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 4, 7, 9, 10, 11 and 12 relate to the rights to legal protection from enforced disappearances; 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.

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.

Moreover, in the study on enforced disappearances and economic, social and cultural rights, the Working Group on Enforced or Involuntary Disappearances noted that due to the collective character of certain economic, social and cultural rights, enforced disappearances of human rights activists violate their economic, social and cultural rights, the rights of others engaged in related activities, and of the larger community of people who relied on the disappeared person to represent and fight for their rights (A/HRC/30/38/Add.5).

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 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.

We also wish to refer your Excellency's Government to articles 1, 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 or 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. Failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding unnecessary, excessive or otherwise unlawful use of force contravenes a State's obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction, under article 2 of the Convention. 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 1, 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). 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”.

In addition, the HRC Resolution on “Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials” (A/HRC/46/L.27), “Calls upon all states to take effective measures to ensure that the use of force by police and other law enforcement officials, including the use of less-lethal weapons, is in conformity with international obligations and the principles of legality, necessity, proportionality, accountability and non-discrimination, and that those using force account for each use of force, bearing in mind that lethal force may only be used to protect against grievous bodily harm or an imminent threat to life (para. 12); Emphasizes that, in the context of assemblies, police and other law enforcement officials play a key role in enabling and upholding the right of peaceful assembly and the rights to freedom of expression and of association, and urges all States to ensure that police and other law enforcement officials avoid using force during assemblies, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force (para. 13); and Affirms that police and other law enforcement officials shall not use firearms against persons except in self-defence or in defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives (para. 14)”.

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.

We recall that the definition of “terrorism” and “terrorism offences” must be confined to acts that are 'genuinely' terrorist in nature in accordance with the elements identified by the 19 UN Sectoral Conventions on terrorism offences, Security Council in its resolution 1566 (2004) and the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, and consistent with the definition of terrorism offered by the mandate of the UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98, paras. 26-50 and 72; A/HRC/15/51, para. 28). Criminal offences must thus be set out in precise and unambiguous language that narrowly defines the punishable offence. We further refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. These resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law.

We recall that the failure to use precise and unambiguous language in relation to terrorism offences fundamentally affects the protection of a range of human rights and freedoms. The adoption of overly broad definitions of terrorism carries the potential for the deliberate misuse of the term and poses the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights (A/HRC/16/51, para. 26). We underscore that the definition of terrorism and related offences must be “accessible, formulated with precision, non-discriminatory and non-retroactive.” We bring your attention to the 'principle of legal certainty' under international law, which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognises that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse.

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.