

**Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: AL LKA 1/2024  
(Please use this reference in your reply)

7 February 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Special Rapporteur in the field of cultural rights; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 54/8, 46/9, 54/14, 53/4, 52/9, 50/17, 52/5 and 49/10.

We would like to bring to the attention of your Excellency's Government information we have received concerning **alleged restrictions and obstructions imposed on memorialization efforts carried out by Tamil civil society to commemorate Maaveerar Naal (Heroes' Day), and the alleged arrest and/or detention of participants or organizers of these events, pursuant to the Prevention of Terrorism Act (PTA).**

With regards to obstructions placed on memorialization efforts, we would like to recall joint communication AL LKA 7/2020 of 9 November 2020 concerning, inter alia, the obstacles imposed on memorialization initiatives led by victims' groups and the intimidation of victims and civil society. We regret not having received a response to this communication.

With regard to obstacles placed on the activities carried out by members of the Tamil minority to raise awareness or commemorate victims of enforced disappearance or honor their dead we recall joint communication LKA 1/2022 of 22 April 2022 concerning the alleged assault and excessive use of force by police officers, against relatives of disappeared persons during a protest in Jaffna, which resulted in the injury of several women, including human rights defenders from the Tamil minority. We further recall joint communication LKA 6/2020 of 6 October 2020, concerning alleged police harassment and excessive use of force against demonstrators and human rights defenders during a peaceful assembly for the International Day of the Victims of Enforced Disappearances, including against members of the Association of Relatives of the Enforced Disappeared North East, an organization that seeks justice, truth and reparation for the families of Tamils who were forcibly disappeared during the conflict. We regret not having received responses to these communications.

We also recall joint communications LKA 3/2016, LKA 5/2018, LKA 1/2019, LKA 2/2021, LKA 7/2021, LKA 5/2022 and LKA 4/2023 which raise concerns about the Prevention of Terrorism Act (PTA)'s lack of compliance with international human rights standards and its reported arbitrary application to criminalize freedom of expression and association. We appreciate the responses received to LKA 2/2021 and LKA 7/2021 and would appreciate receiving responses to the remaining ones.

According to the information received:

Maaveerar Naal is a day of remembrance for Sri Lankan Tamil families in the north and east of the country. It is commemorated each year on 27 November with ceremonies, gatherings, and memorial events in memory of combatants of the LTTE who died in combat during the civil war between 1983-2009.

On 23 November 2023, the Valaichenai police demolished a Maaveerar Naal memorial at Tharavai Thuyilum Illam, Batticaloa. The memorial was constructed ahead of the commemorations, including to honor the dead, using the last remaining rubble from tombstones that the authorities had previously bulldozed. The police stated that the memorial had been erected illegally and had obtained a court order to remove it.

On 24 November 2023, Mullaitivu Magistrate's Court issued an order prohibiting events dedicated to the commemoration of dead and/or disappeared LTTE cadres on Maaveerar Naal.

On 26 November 2023, the police in Mullaitivu threatened organizers of Maaveerar Naal commemorations with arrest if they erected Tamil flags or symbols.

On 27 November 2023, hours before the commemoration started, the police tore down flags, symbols and decorations at the remembrance event in Mullaitivu, although the Mullaitivu Magistrate Court had issued an order that morning expressly permitting their use for Maaveerar Naal.

On the same day, the police deployed roadblocks to obstruct access to the LTTE cemetery in Alankulam, Trincomalee district, by a group of Tamil who attempted to memorialize Maaveerar Naal, including youth and relatives of individuals who died during the war. The police also disrupted their subsequent attempts to light roadside lamps in commemoration.

Police officers also raided the Maaveerar Naal commemoration at Tharavai Thuyilum Illam, Batticaloa on that day. They pulled down flags, lamps and bunting that had been placed around the cemetery and arrested individuals participating in the memorialization activities.

Sri Lankan police had reportedly interrupted and blocked other commemorations across the North-East. The Mallakam Magistrate Court dismissed petitions filed by the police in Manipay, Palaly, Thellipalai, and Achuveli to ban Maaveerar Naal commemorations.

Sri Lankan security forces have reportedly arrested and/or detained individuals, who participated in or assisted with the organization of Maaveerar

Naal commemorations pursuant to the Prevention of Terrorism Act (PTA), despite a de facto moratorium on its implementation announced by the authorities in March and June 2022. Incidents of the application of the PTA to intimidate and/or coerce Tamils in the context of memorialization events, such as the Maaveerar Naal, have been reported in the past.

The restrictions placed on efforts and persons involved in the memorialization of Maaveerar Naal have reportedly taken place in a broader context of intimidation and obstruction of remembrance activities led by Tamils. Since the end of the civil war in 2009, successive administrations have reportedly prevented Tamils from publicly memorializing the war's dead and disappeared persons.

Without prejudging the accuracy of these allegations, we express concern at the alleged restrictions and obstructions imposed on memorialization efforts carried out by Tamil civil society to commemorate Maaveerar Naal and mourn their deaths and remember disappeared persons. We express further concern at the destruction of a memorial commemorating Maaveerar Naal in Batticaloa and at the removal of commemorative flags, symbols and objects used in the commemorations of this day, despite the existence of court orders expressly permitting their utilization for such purposes.

We raise concern regarding the reported arbitrary arrest and/or detention of persons participating or involved in the organization of memorialization activities to mark Maaveerar Naal, in the application of the PTA, despite the moratorium announced on the implementation of the Act. We reiterate the various concerns expressed in communications and reports from several UN Special Procedures and the UN High Commissioner for Human Rights regarding the PTA's continued lack of compliance with international human rights standards, including after its recent attempted amendment, and its reported arbitrary application to criminalize freedom of expression and freedom of assembly and association.<sup>1</sup> We are concerned that the arrests and detentions appear to be solely related to the exercise of the right to freedom of expression, association and peaceful assembly of Tamils in the North-East involved in memorialization initiatives and appear to fall within a broader pattern of intimidation and harassment against them.

We recall that preventing ethnic minorities or any group of people from conducting ceremonies to memorialize the dead and the disappeared and criminalizing them for carrying out these activities violates the rights to freedom of expression and freedom of assembly and association and the right to participate freely in cultural life. It may further violate the duty of the State to preserve memory about past violations and ensure the transmission of such history to current and future generations. Should these allegations be confirmed, they would entail a violation of international human rights law, in particular articles 7, 9, 19 21 and 27, read alone and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Sri Lanka on 11 June 1980, and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified on 27 April 1977; as well as article 24, paras. 1-3 and 7, of the International Convention on the Protection of All

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<sup>1</sup> [LKA 3/2016](#); [LKA 5/2018](#); [LKA 1/2019](#); [LKA 2/2021](#); [LKA 7/2021](#); [LKA 5/2022](#); [LKA 4/2023](#); A/HRC/48/60/Add.2; A/HRC/45/45/Add.1; A/HRC/40/52/Add.3 A/HRC/44/50/Add.1; A/HRC/39/45/Add.2; A/HRC/51/5; A/HRC/54/20; <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>

Persons from Enforced Disappearances, ratified on 25 May 2016; and articles 12 and 19 of the Declaration on the Protection of All Persons from Enforced Disappearances; article 22 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and principle 3 of the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity; and article 1 of the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

We note that the allegations appear to be inscribed in a broader context of reports of systematic targeting and harassment of relatives of disappeared persons by the Sri Lankan authorities, and subsequent incommunicado detention, in connection with the legitimate exercise of their fundamental rights in the pursuit of truth, justice memory and accountability for serious human rights violations.

We reiterate that, under international law, the prohibition of enforced disappearances has attained the status of *jus cogens* and that the detention of the relatives of the disappeared without adequately acknowledging their deprivation of liberty constitutes an enforced disappearance, irrespective of the duration or the type of concealment concerned. In this regard, all victims of enforced disappearances, including relatives of those disappeared whose suffering is rooted in the primary violation against the disappeared person, and anyone who has suffered harm as a direct result of an enforced disappearance, have the right to know the truth, reparations, and to exercise their rights without undue restrictions.

We reiterate our call for a substantial reform or repeal of the PTA to bring it in line with international human rights standards. As evidenced by the aforementioned list of communications and reports produced by several UN Special Procedures and the UN High Commissioner for Human Rights, serious concerns have been raised over the years about the arbitrary application of the PTA; its frequent discriminatory use against individuals working on specific issues such as human rights, disappearances, and access to resources and livelihoods; the ‘overly broad and vague’ definition of terrorism contained in section 2 of the PTA, which is incompatible with the principle of legal certainty; and the duration of detention for preventative or investigatory purposes under section 9 of the PTA which has facilitated the torture or ill-treatment of detainees (see OL LKA 7/2021).

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please inform about the measures adopted to investigate the restrictions placed on Maaveerar Naal events and the removal of commemorative objects, symbols and flags, and to prosecute those responsible.

3. Please provide information on how the participation of individuals in or organizing Maaveerar Naal events for which they were arrested and/or detained, qualify as acts of terrorism under the PTA. Please also provide information on how the charges brought against these individuals are in accordance with the principles of legal certainty, necessity, proportionality and non-discrimination under international human rights law. Please provide information also on whether any measures have been undertaken to investigate these allegations, identify those responsible and prosecute them.
4. Please inform about the measures adopted to ensure that Tamils can exercise their rights to memorialize and mourn their dead and remember the disappeared, to participate in cultural life, to freedom of expression and to peaceful assembly.
5. Please indicate whether your Excellency's Government has imposed a moratorium on the PTA. If so, please indicate how the proceedings under the PTA are in full compliance with international human rights standards, the reasons that would justify the application of the provisions of the PTA despite its moratorium and whether the Government intends to continue to apply it until this piece of legislation is repealed or reformed.

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

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that Tamils can memorialize and mourn the dead and remember the disappeared, that individuals arbitrarily detained under the PTA for conducting these activities are released, and that the Act is placed in a moratorium on its use until it can be effectively repealed or reformed to fully comply with international human rights standards.

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

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## **Annex**

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

In connection with above alleged facts and concerns, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards. In particular, the facts alleged, if proved correct, appear to be in contravention with articles 7, 9, 10, 14, 19, 21, 22 and 27, read alone and in conjunction with article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Sri Lanka on 11 June 1980.

We would like to recall the Updated set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Principle 2 establishes the inalienable right of all persons to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led to them. In addition, principle 3 establishes the duty of States to preserve memory about those violations and their responsibility in the transmission of such history. It underscores that "people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights [...] and to facilitate knowledge of those violations". Such measures shall aim at "preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments". Interpretation of past events that have the effect of denying or misrepresenting violations are incompatible with the aforementioned obligations of the States.

We would further like to refer to Human Rights Council Resolution 33/19 on human rights and transitional justice that notes with concern that attempts to deny or to justify gross violations of human rights and serious violations of international humanitarian law may risk undermining the fight against impunity, reconciliation and efforts to prevent such crimes, (pp. 12). It further recognizes that justice processes, memorialization processes, and the preservation of archives and other reliable evidence concerning gross violations of human rights and serious violations of international humanitarian law [...] ensure that such crimes are never forgotten and contribute to the prevention of their recurrence.

In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by General Assembly resolution 60/147 recalled that memorialization processes are also part of the right to reparation. Principle 22 specifies that satisfaction should include, inter alia,; verification of the facts and full and public disclosure of the truth; an official statement or a judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim; a public apology, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims; and the inclusion in training and educational material of accurate information on the violations that occurred.

We would further like to refer to article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19 (CCPR/C/GC/34).

We further recall that according to article 21 of the ICCPR, “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2(1) of the ICCPR). 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).

In addition, we 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.

We would also like to refer to article 27 of the ICCPR, by which persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. According to general comment no. 23 of the UN Human Rights Committee, a State party must protect the existence and exercise of this right against denial or violation, including through positive measures of protection against the State itself.

Further, article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Sri Lanka on 27 April 1977 establishes the right

of everyone to take part in cultural life. Under this provision, States Parties have also undertaken to respect the enjoyment and development of cultural practices and the right of everyone, individually, in association with others, or within a community or group, to seek, receive and impart information and ideas of all kinds and forms including art forms.

General comment 21 (2009) of the UN Committee on Economic, Social and Cultural Rights recalls that States have the obligation to respect and protect cultural heritage in all its forms, which includes historical narratives and memorial practices. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations. In her two thematic reports dedicated to a) history textbooks (A/68/296) and b) memorials and museums (A/HRC/25/49), the Special Rapporteur in the field of cultural rights has stressed the importance of setting out the conditions to ensure a multi-perspective approach in history teaching and memorialization processes and underscored that processes of social debate, memorialization or history teaching about past events should not aim at unifying nation-wide views in an homogenous – sealed tight - discourse or identity, but rather at providing those affected, notably victims but also the rest of society, with the spaces necessary to articulate narratives, share perspectives, and promote interaction and understanding between people and communities, where the respect of human rights and the embracement of diversity constitute the cornerstone of shared identities.

We also emphasize that article 1 of the 1992 Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities requires States to protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and encourage conditions for the promotion of that identity.

In connection with the above alleged facts, we would also like to recall the findings and recommendations of the former Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, following his country visit to Sri Lanka contained in report A/HRC/45/45/add.1 and its follow up report A/HRC/48/60/Add.2. The report recommends the Government to support memorialization initiatives and to provide communities with space to mourn and remember victims (para. 94); it urges the cease of the continued harassment and surveillance by security and intelligence personnel of human rights defenders and other social actors (para. 87.b); and calls for the repeal the Prevention of Terrorism Act and its replacement with new counter-terrorism legislation that adheres to international standards (para. 87.a). More generally, the report urges the development a comprehensive transitional justice strategy that includes a clear timeline for the establishment of the different transitional justice mechanisms and allows the public to engage in consultations in the development of the strategy (para. 86.a).

We would also like to refer to report (A/HRC/45/45) on memorialization processes, in which the Special Rapporteur recalled that States have adopted various instruments that recognize the fundamental role played by memory in creating an environment conducive to coexistence in the wake of violations of human rights and international humanitarian law, the list of which was noted above. The Special Rapporteur stressed that memory as part of transitional justice must have human rights focus and be consistent with it. Good uses of memory aim to establish ‘a dialogical truth’ that is, to create the conditions for a debate within society about the

causes, direct and indirect responsibilities, and consequences of past crimes and violence, which will allow it to limit the spectrum of permitted lies. The aim of memorialization process is to enable victimized populations to explain a brutal past - without justifying it - thus easing existing tensions and allowing society to live more peacefully with the legacy of past divisions. As explained in the report: “Without falling into a dangerous relativism or creating a homogeneous thought, different narratives and interpretations of past violence can coexist in a democratic society; in this way, they cooperate with the dynamics of social reconstruction. [...] However, this process should never result in denial or relativization of the violations committed; nor should it give rise to statements against the conclusions of truth commissions and/or judicial proceedings, which provide a proven record of violations.” The Special Rapporteur also underscored that the voices of the victims of human rights violations must occupy a privileged space in the construction of memory, avoiding the distortions that the perpetrators may attempt to impose (paragraphs 25-38).

We wish to further recall that the prohibition of enforced disappearance has attained the status of *jus cogens* under international law. In this connection, we wish to refer to article 24, paragraphs 1-3 of the International Convention on the Protection of All Persons from Enforced Disappearances (ICPPED), ratified by Sri Lanka on 25 May 2016, concerning the definition of victim as “any disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”, the right to truth, and the obligation to undertake search activities, to “locate and release the disappeared persons, and in the event of death, to locate, respect and return the remains”. Moreover, article 7 further stipulates that “each State party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance”.

In this connection, we wish to refer to the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance<sup>2</sup> which establishes in its paragraphs 3 and 5 of article 13, that “States shall ensure that all persons involved in the investigation of cases of enforced disappearance, including the complainant, counsel and witnesses, are protected against ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished”. Article 13 further stipulates that “any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority”. Ultimately, article 19 of the Declaration establishes that “victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible”.

We underline that an enforced disappearance continues until the fate and whereabouts of the individual concerned are established irrespective of the time passed, and that the family members have a right to truth which means the right to know about the progress and results of an investigation, the fate and whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s) (A/HRC/16/48). We further recall that all victims of enforced disappearances have the right to know the truth and to reparation, including

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<sup>2</sup> [Declaration on the Protection of all Persons from Enforced Disappearance](#)

compensation (A/HRC/16/48, para. 39). The right to truth is therefore an absolute right which cannot be restricted and there is an obligation to take all the necessary steps to find the disappeared person (A/HRC/16/48, general comment, para. 4).

In its General Comment on the right to recognition as a person before the law in the context of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances noted that when a person deprived of liberty is not acknowledged by the State, the legal rights of this person are placed in a legal limbo, a situation of total defencelessness. The crime of enforced disappearance puts the detainee outside of the protection of the law, denies the person of legal existence and prevents the enjoyment of their rights, including due process rights and judicial safeguards, and other fundamental rights and freedoms.

In this connection, in its General Comment on article 10 of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, the Working Group stipulated that any deprivation of liberty must be done in an officially recognized place of detention and that in no circumstances a State interest may be invoked to justify or legitimize secret or unofficial places of detention (E/CN.4/1997/34 paras 23-24). In the event that an official investigation is carried out, and considering the distinctive components of an enforced disappearance and the participation of State agents and attempts to conceal information and cover up the crime, the Working Group noted it should be undertaken with the requisite autonomy and independence (A/HRC/45/13/Add.3 para. 95).

Moreover, in the study on enforced disappearances and economic, social and cultural rights, the Working Group noted that due to the collective character of certain economic, social and cultural rights, enforced disappearances of human rights activists and relatives of the forcibly disappeared, 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 paras. 34-40).

We further refer to Human Rights Committee, general comment number 36, which highlights that enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life, and results in a violation of the right to life. It further observes that States are required to conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance and introduce prompt and effective procedures to investigate these cases thoroughly, by independent and impartial bodies leading to the identification of potential perpetrators. The obligation to carry out prompt, thorough and impartial investigations shall be conducted *ex officio* if required. To this purpose, adequate complaint mechanisms should be made available, which should be independent and committed to carrying out impartial and prompt investigations into all allegations of enforced disappearances (A/HRC/45/13/Add.3 paras. 16 and 17).

In this regard, the Guiding Principles for the Search for Disappeared Persons of the Committee on Enforced Disappearances<sup>3</sup> stipulate that the search for the disappeared should follow a differential approach (principle 4), respect the right to participation (principle 5), be considered as a continuing obligation (principle 7) and

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<sup>3</sup> [Guiding principles for the search for disappeared persons | OHCHR](#)

be conducted on the basis of a comprehensive strategy (principle 8). The Guiding Principles further establish that the search should be interrelated with the criminal investigation (principle 13) and be independent and impartial (principle 15).

In the follow-up report to its country visit to Sri Lanka undertaken from 9 to 18 November 2015, the Working Group reiterated its concern about the limited number of memorials and spaces for people to remember and reflect, especially given the dimension of the enforced disappearances in Sri Lanka, and again lamented the lack of government-supported memorial built for the victims of enforced disappearances. The Working Group recommended the official sponsoring of memorials and to erect national and local monuments as soon as possible, following consultation with families and other stakeholders. It further called on the Government “to take steps to ensure all victims receive equal attention with regards to memorials and reparations” (A/HRC/42/40/ADD.1 para. 18 and page 60).

We respectfully remind your Excellency’s Government that although there is no multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counterterrorism legislation is limited to criminalizing conduct which is properly and precisely defined and strictly guided by the principles of legality, necessity, proportionality and non-discrimination.<sup>4</sup> The definition of terrorism in national legislation should be guided by the provisions of international counterterrorism instruments and the definitions found in Security Council resolution 1566 (2004), the UN General Assembly’s Declaration on Measures to Eliminate International Terrorism<sup>5</sup> and the model definition recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.<sup>6</sup> Counter-terrorism legislation should comply with all relevant international human rights obligations, including due process, the prohibition of arbitrary detention, freedom of expression and opinion, freedom of peaceful assembly, and minority and cultural rights.

We emphasize that the ‘principle of legal certainty’ under international law, including article 15(1) of the ICCPR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and are the consequences of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse, including in the context of vague counter-terrorism laws.<sup>7</sup> Article 9(1) ICCPR affirms the principle of legal certainty by requiring that any substantive grounds for arrest or detention must be prescribed by law and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application, and thus to avoid arbitrary deprivation of liberty.

While the prevention of terrorism may, in clearly defined circumstances, be a legitimate ground for strictly necessary, proportionate and non-discriminatory restrictions on freedoms of expression and of association, exceptional care must be taken to ensure the legislation is ‘crafted and applied in a manner that conforms to the strict requirements of paragraph 3 [of article 19 of the ICCPR].’ As previously indicated, we wish to emphasize that the right to freedom of expression extends not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive

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<sup>4</sup> CCPR/C/GC/34.

<sup>5</sup> [S/RES/1566](#); [A/RES/51/210](#).

<sup>6</sup> See [A/HRC/16/51](#), para. 28 (Practice 7. Model definition of terrorism).

<sup>7</sup> [A/73/361](#), para.34.

or as a matter of indifference, but also to those that offend, shock, or disturb the State or any sector of the population.”