Full text of the letter sent by UN Special Rapporteur on extrajudicial, summary and arbitrary execution to Permanent Representative of Sri Lanka to the United Nations office at Geneva
18 December 2009
Excellency,
I have the honour to address you in my capacity as Special Rapporteur on extrajudicial summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 8.3.

I write to your Excellency's Government with regard to the circumstances of the death of three senior representatives of the Liberation Tigers of Tamil Eelam (LTTE), Mr. Balasingham Nadeshan, Mr. Seevaratnam Pulidevan and Mr. Ramesh, as well as of members of their families, in the night of 17 to 18 May 2009.

According to information I have received:

On 17 May 2009, the day before your Excellency's Government announced that its forces had completely defeated the LTTE. Messrs, Nadeshan, Pulidevan and Ramesh were trapped with other senior cadres of the LTTE in a small area north of Vellamullivaikkal. Through intermediaries they sought to establish contact with your Excellency's Government to inquire how they could surrender to the Sri Lanka Army (SLA). The reply, coming from the Secretary of Defence in your Excellency's Government and from a Members of Parliament who is at the same time a senior adviser to the President, and conveyed through the intermediaries, was that they should walk towards the positions of the SLA in a way that made their intentions clear and holding a white cloth. The Commander of the SLA 58th Brigade, the unit on the front line with the last LTTE position, however, received a telephone call from the Secretary of Defence instructing him to order his forces to shoot those surrendering. When Messrs. Nadeshan, Pulidevan and Ramesh walked towards the SLA positions carrying white cloths in the first hours of 18 May 2009, soldiers opened fire on them and killed them. An unspecified number of family members of the three men were killed as well.

These allegations were made by the Commander of the Sri Lanka Army at the time of the events and subsequent Chief of Defence Staff (now retired) General Gardihewa Sarath Chandralal Fonseka, in an interview to the newspaper The Sunday Leader. The accounts of journalists embedded with the SLA 58th Brigade confirm some of the alleged circumstances of the death of Messrs. Nadeshan, Pulidevan and Ramesh and their families.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Excellency's Government to fundamental legal rules applicable to all armed conflicts under

international humanitarian law and human rights law.

Common Article 5 (applicable to armed conflict not of an international character) of the Geneva Conventions of 1949, to which your Excellency's Government is a party, dictates that "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their and those placed hors de combat by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely [....]". To this end the following acts are and shall remain prohibited at anytime and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds".

Similarly, an authoritative study of customary international humanitarian law finds that attacking and killing persons who are recognized as hors de combat is prohibited. Persons hors de combat include anyone who clearly expresses an intention to surrender, provided he or she abstains from any hostile act and does not attempt to escape (Rule 47 0f the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross).

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on the death of Messrs. Nadeshan, Pulidevan and Ramesh, as well as of the members of their families, I would be grateful for the cooperation and observations of your Excellency's Government. In particular in relation to the following questions:

1. Are the allegations summarized above accurate, If not so, please share the information and documents proving their inaccuracy.

2. What information does your Excellency's Government have on the family members of Messrs. Nadeshan, Pulidevan and Ramesh allegedly killed on 18 May 2009.

3. Please refer to the results of my military, police, judicial and other inquiry or investigation carried out in relation to the allegations summarized above.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

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

Philip Alston

Special Rapporteur on extrajudicial, summary or arbitrary executions

Copy of Original Letter

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