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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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10 December 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/16, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **arrest of members of the Asian Federation Against Involuntary Disappearances (AFAD) in Colombo, Sri Lanka.**

According to the information received:

On 3 December 2012 in Colombo, the Asian Federation Against Involuntary Disappearances (AFAD) concluded its week-long Council Meeting in Sri Lanka with a solidarity night, including a video presentation, together with local civil society organizations and family members of the disappeared. It was reported that the event resulted in the arrest of six persons, including two elderly women family members of the disappeared, Ane Teresa Fernando and Ariyawathi de Silva. The other persons arrested were: the Secretary of the Families of the Disappeared (FOD), Wasantha Ranile Kumara; the Executive Director of the Right to Life, Mr. Philip Dissanayake; a vehicle driver and a friend. It was further reported that their laptops, mobile phones and the key to the vehicle of Mr. Dissanayake were taken into police custody. The individuals arrested were put into a police jeep by uniformed policemen, including the Headquarters Chief Inspector in Negombo, and another policeman who introduced himself as Assistant Superintendent of Police, but was plain clothed.

It was further reported that in the confrontation between the policemen and FOD leaders headed by FOD President, Mr. Brito Fernando, the FOD learned that the reason for the arrest was the presentation of a video on the recent commemoration of the anniversary of the Monument of the Disappeared in Seeduwa, Sri Lanka held on 27 October 2012. It was reported that Mr. Fernando was told by the policemen that he was being arrested on the charge of showing a video documentary against President Mahindra Rajapaksa. Reportedly, Mr. Fernando assumed responsibility of the video and challenged the policemen to arrest him but the policemen responded that they only needed a copy of the video, which Mr. Fernando refused to give.

In addition, it was reported that after Mr. Fernando and other leaders confronted the police on the legality of the arrest of the six persons, they were released after being held in the police vehicle for more than an hour.

Without expressing at this stage an opinion on the facts of the case, we would like to recall that in the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that all involved in the investigation [of cases of disappearance], including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. It also stated that States must take steps to ensure that any 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.

Further, we would like to recall that in its resolution 21/4, adopted without a vote, the Human Rights Council urged States to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected, paying special attention to women as relatives of disappeared persons in the context of their struggle to resolve the disappearance of members of their families.

In this connection, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victim or the family of the victim.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Olivier de Frouville
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
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Margaret Sekaggya

Special Rapporteur on the situation of human rights defenders