

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: AL
LKA 7/2014:

7 July 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 25/13 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Ms. [REDACTED], a woman of Tamil origin who has reportedly been beaten up and repeatedly harassed since she reported that two military officers raped her in June 2010.

A previous communication sent by special procedures mandate holders on 14 December 2011 addressed [REDACTED]'s alleged rape. According to the new information received, investigations and court proceedings have continued for the past four years; [REDACTED]'s case is currently pending in the Jaffna High Court (Case no. 1569/12). With the support of a women's group, [REDACTED] has been relocated to Vishvamadhu (Mullaitheevu district), where she opened a shop with her husband.

According to information received:

On 13 February 2014, [REDACTED] was with her children and mother in law in her shop when two men wearing black helmets arrived. A few minutes later, two more men entered carrying cans of beer, which they claimed [REDACTED] sold to them. All four men then reportedly surrounded [REDACTED], pointed a gun at her and accused her of selling alcohol without a licence. They spoke in Tamil and wore dark brown t-shirts with black trousers.

[REDACTED] allegedly then called an activist on speaker phone so that the activist could hear what was happening. Two more men dressed like the others entered the shop, and one claimed to be the officer in charge of a nearby police station. He ordered [REDACTED] to go with him, but she shouted into her phone for help. Allegedly, the officer then took the phone, and the activist told him that she was in contact with

the local police and magistrate. The men then reportedly left. The next day, the police issued a First Information Report against [REDACTED] and took her to the magistrate, where she denied the charges.

It is further alleged that a man who moved into [REDACTED]'s area has also repeatedly harassed [REDACTED] and her family. One day, the man entered [REDACTED]'s kitchen and broke her pots and pans. Then, on 22 March 2014, he severely beat [REDACTED]. She allegedly complained to the police many times, but they did not help her because the man is reportedly acquainted to the police and speaks Sinhala. The police eventually filed a First Information Report on this attack, but reportedly have not investigated further.

In May 2013, two days before the Jaffna court was scheduled to hear [REDACTED]'s rape case, the police arrested her alleging that [REDACTED] sold alcohol without a licence. However, the lawyer representing the military officers in the rape case then cross examined [REDACTED] to try to prove that her testimony was inconsistent.

Concern is expressed that the continued harassment and victimization of [REDACTED] could be in reprisal for her reporting the alleged rape by two military officers in June 2010. Concern is also expressed that [REDACTED] has not yet been adequately provided with access to the mechanisms of justice, or to just and effective remedies for the harm that she suffered.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** 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 any comment you may have on the above mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate any remedial action taken vis à vis the victim or his/her family.

We would appreciate a response within 60 days.

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 responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Rashida Manjoo

Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, it is relevant to quote article 12 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment (CAT), acceded by Sri Lanka on 3 January 1994, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. In this context, we would also like to recall paragraph 7b of the Human Rights Council Resolution 16/23.

We would also like to recall that pursuant to paragraph 18 of the General Comment No. 2 of the Committee against Torture (CAT/C/GC/2, 24 January 2008), State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors have to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors.

We also make reference to article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which recalls the responsibility of States to exercise due diligence to prevent, investigate and, [...] punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. In this sense, we also refer to general recommendation No. 19 (1992) by the Committee on the Elimination of Discrimination against Women.