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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of internally displaced persons.

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (26-18)
LKA 3/2014

20 March 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of internally displaced persons pursuant to Human Rights Council resolutions 24/7, 16/16, 16/4, 24/5, 16/5, and 23/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Ms. **Balendran Jayakumari and her 13-year-old daughter**. Ms. Jayakumari is a human rights activist working on the issue of enforced disappearances in Sri Lanka. She appeared in various documentaries on enforced disappearances and mobilized families of the disappeared in Kilinochchi to attend various hearings, peaceful demonstrations and meetings in relation to such disappearances.

Furthermore, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Mr. **Ruki Fernando**, a former FORUM-ASIA staff member and prominent local human rights defender who has focused on issues pertaining to the situation of defenders in the country, freedom of expression, enforced disappearances, land grabbing and forcible displacement, and Rev. **Praveen Omi**, former Director of the Centre for Peace and Reconciliation, who works on the protection of defenders and conflict resolution and humanitarian relief for internally displaced persons.

According to the information received:

On 13 March 2014, an unidentified man reportedly ran into the house of Ms. Balendran Jayakumari in Kilinochchi after allegedly opening fire at officers from the Criminal Investigation Department. The army then surrounded the house and detained there Ms. Jayakumari and her daughter from 4:00 p.m. for several hours. At 4:00 p.m., Ms. Jayakumari called a politician to alert him about the situation. At 4:30 p.m., a human rights activist tried to call Ms. Jayakumari, but his call was reportedly intercepted by an unknown individual who enquired about his identity and why he was calling Ms. Jayakumari. After the call, Ms. Jayakumari's phone was allegedly switched off. At around 9:00 p.m., Ms. Jayakumari and her daughter were presented before the Kilinochchi magistrate who informed her that she was accused of sheltering a fugitive who had allegedly fired at a police officer. A 16-day detention order was subsequently issued against Ms. Jayakumari under the Prevention of Terrorism Act. In a statement given to the magistrate, Ms. Jayakumari reportedly denied all accusations and indicated that she had been physically assaulted by the military personnel after having been taken from her house. Ms. Jayakumari is being held in the Boosa detention centre and her daughter was reportedly handed over to the Department of Probation and Child Care Services in Kilinochchi by court order.

On 16 March, around 10:00 p.m., while investigating arrests made on 13 March, Mr. Ruki Fernando and Rev. Praveen Omi were reportedly arrested by officers belonging to the Terrorist Investigation Division (TID), and brought to the local police station. According to an official, both men were apprehended because they "behaved in a suspicious manner as they visited some families of those who have lost their family members". It is reported that Mr. Fernando and Rev. Praveen Omi were interrogated separately for three hours by TID officers.

On 17 March, around 1:30 a.m., Mr. Fernando and Rev. Praveen Omi were reportedly transferred, handcuffed and blindfolded, to Vavunia police station for further interrogation. At 11:00 a.m., a Notice of Arrest was issued against Mr. Fernando on alleged acts of terrorism in Kilinochchi, specifying that he would be detained for further investigation on the second floor of the police New General Secretariat in Colombo. It is unclear whether a similar notice was issued against Rev. Praveen Omi. At 1:30 p.m., the TID Director announced that both men were taken to TID headquarters in Colombo. Later that day, the police spokesman stated that Mr. Fernando and Rev. Praveen Omi had first been detained at the police station in Kilinochchi under the Prevention of Terrorism Act, before being transferred to Vavunia, and then to Colombo, for further questioning. He added that both men would be charged with "attempting to create ethnic discord among communities and to promote separatism". According to reports, no charges have been pressed against them.

On 19 March, Mr. Fernando and Rev. Praveen Omi were released without condition, whereas the Ministry of External Affairs stated on its website that they were released on bail. They were denied access to a lawyer, despite repeated

requests. According to sources, the police announced that Mr. Fernando, and possibly Rev. Praveen Omi, will be the subject of further investigations.

Serious concerns are expressed that the arrest and detention of Ms. Balendran Jayakumari, Mr. Fernando and Rev. Praveen Omi may be linked to their legitimate human rights activities. Further concerns are expressed for the physical and psychological integrity of Ms. Balendran Jayakumari while in detention. In addition, serious concerns are expressed about the situation of Ms. Jayakumari's daughter who has been separated from her mother. Finally, serious concerns are expressed about the further investigations which Mr. Fernando, and possibly Rev. Praveen Omi, will be the subject of.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights.

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."

We would like to refer to article 22 of the International Covenant on Civil and Political Rights, which provides that "[e]veryone 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".

We would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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."

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; and

- 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 wish to draw your Excellency’s Government attention to articles 13 (3) of the Declaration on the Protection of all Persons from Enforced Disappearance, which states that “Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal”. Furthermore, article 13 (5) of the Declaration provides that “Steps shall be taken 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”.

We would also like to recall that, in its resolution 7/12, the Human Rights Council urged Governments 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 or ill-treatment to which they might be subjected.

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, since 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 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. Please indicate the legal basis for the arrest and detention of Ms. Balendran Jayakumari, Mr. Ruki Fernando and Rev. Praveen Omi, and how such measures are compatible with the aforementioned international human rights norms and standards.
3. Please provide details on any investigation or other inquiries about the allegation that Ms. Balendran Jayakumari was physically assaulted by soldiers. Please indicate what measures have been taken to ensure the integrity of Ms. Balendran Jayakumari while in detention, and the well-being of her daughter.
4. Please indicate the nature of the further investigations which Mr. Fernando, and possibly Rev. Praveen Omi, will be the subject of.
5. Please indicate what measures are to be taken to ensure a safe and conducive environment for human rights defenders operating in the country.

We undertake to ensure that your Excellency's Government's response will be available 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.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Ariel Dulitzky
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
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Maina Kiai

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