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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of discrimination against women in law and in practice, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL G/SO 214 (78-15) G/SO 214 (89-15)
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6 May 2014

Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 25/32, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the conviction of Ms. **Marissa Alexander**, a domestic violence survivor who was convicted of aggravated assault with a deadly weapon and sentenced to 20 years in prison, after firing a warning shot into the ceiling after an altercation with her abusive husband.

According to the information received:

Ms. Alexander, an African-American woman from Florida, was arrested on 1 August 2010, after shooting upward into the ceiling during an altercation with her abusive husband. Reportedly, a court had issued an injunction for protection against Ms. Alexander's husband. It is reported that no one was injured by the shot fired by Ms. Alexander. She was however, charged with three counts of aggravated assault with a deadly weapon with no intent to harm.

It is also reported that Ms. Alexander's husband admitted in a sworn statement that he was the aggressor and that he threatened her life. He had previously been arrested for domestic violence, following an incident in which Ms. Alexander had required medical attention at hospital.

While the Florida statute (Florida Statute § 776.013) allows an individual to defend him/herself if he or she believes it is necessary to prevent death or great bodily injury, the trial court ruled that an individual must first suffer serious bodily injury in order to

defend him/herself. It is reported that since Ms. Alexander could not demonstrate that she suffered “serious bodily injury” at the time she fired the shot, she was unable to claim self-defence and was convicted for the assault and sentenced to twenty years in prison, as a result of Florida’s mandatory minimum sentencing law. Florida’s mandatory sentencing would require courts to impose a minimum sentence of ten years, twenty years, or twenty-five years to life for certain felony convictions involving the use or attempted use of a firearm or destructive device.

Subsequent to her sentencing, Ms. Alexander filed for an appeal. On 26 September 2013, the First District Court of Appeal of Florida reportedly found that the trial-level judge did not properly instruct the jury on the burden for proving self-defense. However, the appeals court allegedly upheld the ruling that precluded Ms. Alexander from invoking the “Stand your Ground” law as a defense. The State Attorney, Angela Corey, allegedly continues the prosecution of Ms. Alexander, and is now seeking 3 consecutive 20-year sentences.

It is reported that after spending twenty-one months in jail, Ms. Alexander was released on home detention on November 27, 2013 with a bond set at \$200,000. In early January, the State Attorney reportedly moved to revoke Ms. Alexander’s bond, claiming that she had violated the conditions of her release and home detention. At a hearing held on January 10, 2014, the judge reportedly held that there had been no wilful violation of the conditions of her release and allowed Ms. Alexander to remain free while waiting for her retrial, which is scheduled for July 28, 2014.

Concern is expressed that Ms. Alexander’s history of abuse by her husband, the fact that she had a court injunction against him, and that she acted in self defence, were not given due consideration during her prosecution and sentencing. Concern is also expressed at the alleged inconsistent interpretation of the Stand Your Ground Law, often perpetuating racial and gender stereotypes, and discrimination, as well as at the obstacles faced by women victims of domestic violence, particularly, those from ethnic and racial minorities, in accessing justice and protection from the State.

Concern is also expressed at the alleged failure of the legal system to recognise persistent domestic violence as falling under the grounds of self-defense, whereby according to the court, an individual must first suffer serious bodily injury in order to defend him/herself. This constitutes de facto discrimination. It has been argued that the prototype of male self-defence is the “bar-room brawl” in which the attack and the response are immediate. However, the prototype of domestic violence against women is persistent violence by the male against which the woman cannot immediately defend herself because of her lesser physical strength. In domestic violence, an additional threat of violence by a persistently violent male partner has cumulative impact as part of a pattern of behaviour and a woman's violence response should be interpreted as a defensive response to the cumulative acts of violence.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international human rights standards relevant to the situation described above, and which are provided in the Annex to this communication. These include in particular, the International Convention on the Elimination of All Forms of Racial Discrimination; the United Nations Declaration on the Elimination of Violence against Women; the Concluding Observations made by the Human Rights Committee following its examination of the United States in April 2014 (CCPR/C/USA/CO/4); Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women; and the Report of the Special Rapporteur on Violence against women, its causes and consequences, following her official visit to the United States in 2011 (A/HRC/17/26/Add.5).

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. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate what efforts, if any, have been made to investigate the role of “Stand Your Ground” laws in cases of domestic violence.
3. Please indicate which measures, if any, have been taken to guarantee the fair application of “Stand Your Ground laws” to cases involving victims of domestic violence, particularly ethnic and racial minorities?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report 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 Ms. Alexander 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.

Frances Raday
Chairperson-Rapporteur of the Working Group on the issue of
discrimination against women in law and in practice

Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences

ANNEX
Reference to International Law and Standards

In connection with the above concerns, we make reference to the following international human rights standards:

1. The International Convention on the Elimination of All Forms of Racial Discrimination, especially articles 2, paragraph 1 (c) and article 5 (a) and (b) requiring Member States to insure equal rights before the law and equal treatment before the tribunals.
2. Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.
3. The Concluding Observations made by the Human Rights Committee following its examination of the United States in April 2014 (CCPR/C/USA/CO/4). The Committee was concerned that domestic violence continues to be prevalent, and that ethnic minorities, immigrants, American Indian and Alaska Native women are at particular risk. The Committee was also concerned that victims face obstacles to obtain remedies, and that law enforcement authorities are not legally required to act with due diligence to protect victims of domestic violence and often inadequately respond to such cases. In that sense, the Committee called on the United States to strengthen measures to prevent and combat domestic violence and ensure that law enforcement personnel appropriately respond to acts of domestic violence. The State party should ensure that cases of domestic violence are effectively investigated and that perpetrators are prosecuted and sanctioned. It should also ensure remedies for all victims of domestic violence and take steps to improve the provision of emergency and other services for women victims
4. Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women which provides that all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State.
5. The findings of the Special Rapporteur on Violence against women, its causes and consequences, following her official visit to the United States in 2011

(A/HRC/17/26/Add.5). She refers to the over-incarceration of women, commonly for non-violent or drug related crimes, and women being over-represented among low level non-violent offenders, yet receiving sentences similar to “high level” offenders under the mandatory sentencing policies. She also refers to the disproportionate impact of over-incarceration of African- American women, with African- American women being the fastest growing population in prison and representing 30% of all women incarcerated under state or federal jurisdiction. The possible causes for racial disparity are complex and varied but the report refers to criminal laws with mandatory sentencing provisions which have a disparate impact on certain racial groups. In her report, the Special Rapporteur on Violence against women calls, inter alia, to explore and address the root causes, including the multiple and intersectional challenges, which lead to the increasing number of immigrant and African-American women in prisons and detention facilities, and to consider alternatives to incarceration, particularly for women detainees who are primary care-givers of their children.