

Mandate of the Working Group on Arbitrary Detention

REFERENCE:
UA LKA 4/2018

22 October 2018

Excellency,

I have the honour to address you in our capacity as Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 33/30.

In this connection, I would like to bring to the attention of your Excellency's Government information we have received concerning 16 detainees who began a hunger strike in the Anuradhapura prison and Colombo Remand Prison on the 13 September 2018 due to their prolonged detention under the Prevention of Terrorism Act.

According to the information received:

Messrs. Mathiyarasan Sulakshan, Sivaprakasan Sivaseelan, Rasathurai Thiruvarul, Sivasubramaniam Thillairaj, Rasavalan Thavaruban, Sooriyakanthi Jeyachandran, Thangavelu Nirmalan, Rasathurai Jegan, Nadarasa Saveswaran, Umar Hatthap, Purusothman Aravinthan, Nallan Sivalingam, Karalasingam Pulenthiran, Ganasekaralingam Rasmathan, Lusias Mariyanayakam Ajanthan, and Murugaiyah Thavaventhana are detainees held in the Anuradhapura Prison and the Colombo Remand Prison.

On 13 September 2018, these detainees began a hunger strike to protest against their prolonged detention. They demand their release, as a general amnesty or as a "rehabilitation".

Due to this hunger strike, five of them have been transferred to the Welikada prison hospital, but they have refused any medical treatment or other form of help unless their demands are met. The health condition of the remaining detainees is deteriorating rapidly.

Most of these detainees have been deprived of their liberty without trial for almost ten years. They are detained under the Prevention of Terrorism Act (PTA). The PTA is known to have led in arbitrary arrests and prolonged detention without charges. The mental and physical well-being of the persons detained under that legislation is reported to have been severely affected due to their long-term detention as well as the torture and other cruel, inhumane and degrading treatments they were subjected to during interrogation.

The cases of these 16 individuals is yet to be adjudicated. The non-attendance of officials from the Attorney General's department who are prosecuting the cases, has been cited as the main cause of the delays. One of the cases, the detainee has not had a hearing for about five years.

In addition, a judge in special High Court in Colombo has been quoted as saying that he had only been able to accept one out of eleven confessions as evidence, while in Anuradhapura, out of fourteen cases, twelve were said to have been based solely on unreliable confessions.

While we do not wish to prejudge the accuracy of these allegations, we are bringing to your attention the situation of these 16 individuals who seem to have been detained for many years without charge or trial, and ill-treated during interrogation. Should these allegations proved to be correct, their detention would constitute severe and prolonged violations of their right to liberty and security, their right not to be subjected to torture or cruel, inhumane or degrading treatment or punishment, and of their to fair proceedings before an independent, impartial and competent tribunal, in accordance with articles 7, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka acceded to on 11 June 1980. The allegations that they were tortured or otherwise ill-treated during their detention would also constitute violations of the Convention against torture, ratified by Sri Lanka in 1994.

In this perspective, we would like to remind that “[t]he right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c) of the ICCPR is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty is reasonable and does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. The Committee on Civil and Political Rights has interpreted in its General Comment 32 (paragraph 35) that the criteria of reasonableness has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities”.

Allow us to remind that “[a]ny period of pretrial detention, including for the most serious offences and terrorism-related crimes, must remain exceptional and must never be of excessive length” (United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 18; and A/HRC/25/60).

Following their recent visits to Sri Lanka, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms and the Working Group on Arbitrary Detention have made several recommendations to your Excellency's Government with regard to corrective or remedial measures that they deemed, ought to be

taken in relation to the Prevention of Terrorism Act (See A/HRC/39/45/Add.2 and A/HRC/40/XX Add.3).

Moreover, with regard to the health of these detainees, I wish to draw attention to the Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules, which state that the provision of health care to prisoners is the responsibility of the State, and that prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, I would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of these persons in compliance with Sri Lanka's international human rights obligations under the Conventions it has ratified.

As it is our responsibility, under the mandate 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 information on the factual and legal grounds for the arrest and detention of these individuals and the compatibility of their detention with the Sri Lanka's international human rights obligations.
3. Please provide information on the reasons why these individuals have been detained without trial for period of up to ten years.
4. Please explain why prompt and effective judicial review of their detention under the PTA has not yet been provided, in spite of what appears to be unreasonable prolonged detention.
5. Please explain why the officials from the Attorney General's department, which is prosecuting the cases, have not appeared in court, thus unduly prolonging the detention without trial of the detainees; and why, in these circumstances, alternative measures to detention have not been taken by the Prosecutor Office, as a measure of justice, to consent to bail or to refer the detainees to rehabilitation programs.

6. Please provide information concerning their current state of health and the measures taken to afford them appropriate medical attention.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention