

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA LKA 8/2021
(Please use this reference in your reply)

15 December 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of Mr. Arumahandige Janith Madushanka, a national of Sri Lanka who fears for his life and safety, while currently being held in custody.

We also note that concerns about the Prevention of Terrorism (Temporary Provisions) Act no. 48 of 1979 have been subject to two previous communications sent by Special Procedures to your Excellency's Government dated 9 August 2021 (OL LKA 3/2021) and 9 December 2021 (OL LKA 7/2021). We thank your Excellency's Government for the replies received to both letters.

According to the information received:

Mr. Arumahandige Janith Madushanka (alias Podi Lassie) is detained at the Police's Criminal Investigations Department (CID) in Colombo, on the basis of a detention order issued under the Prevention of Terrorism (Special Provisions) Act no. 48 of 1979 (as amended).

Mr. Madushanka was arrested in 2015, on charges related to several cases of murder, attempted murder, possession of heroin and extortion. He was initially granted bail but was subsequently remanded due to not being able to fulfil bail conditions. Since June 2020, he is held at the Boossa high security prison.

While there, on an unspecified date, Mr. Madushanka took part in a detainees' protest reportedly organised to demand an improvement of the poor prison conditions. As a result, he was allegedly accused of uttering death threats against senior prison officials, the Secretary to the Ministry of Defence and the President of Sri Lanka. The accusations received wide media coverage and were reported to the Galle Magistrate Court, by the police, on 8 September 2020.

Previously, on 3 September 2020, Mr. Madushanka sent a letter to the Commissioner General of Prisons expressing fear for his life and asking for measures to protect his own safety. On the same day, his mother also sent letters, calling for Mr. Madushanka's protection, to the President of Sri Lanka, the Secretary to the Ministry of Defence, the Minister of Prisons' Management and Prisoners' Rehabilitation and the Commissioner General of Prisons. On 4 September 2020, Mr. Madushanka's grandmother sent a similar letter to the Human Rights Commission of Sri Lanka.

On 11 May 2021, a detainee in the Boossa prison was allegedly shot dead by the police. He had reportedly given statements that he had not heard Mr. Madushanka making threats against anyone.

On 13 May 2021, a second detainee, who had been accused of having made the same death threats as Mr. Madushanka, was allegedly shot dead by the police. According to reports, on 26 November 2021, a third person was allegedly killed by the police, while in custody.

On 9 September 2021, the mother of Mr. Madushanka filed an application with the Supreme Court of Sri Lanka (case no. SC FR 276/21), alleging that his son's continued detention violated his fundamental rights and constituted a threat to his safety. She further submitted that her and a lawyer's requests to obtain permission for Mr. Madushanka to sign documents related to their application had been rejected.

It is submitted that, in November 2021, the mother of Mr. Madushanka received information that when the detention order under which he is currently detained will expire on 15 December 2021, he would be transferred to the crimes' division of the Peliyagoda police.

In another motion, filed with the Supreme Court of Sri Lanka on 6 December 2021, Mr. Madushanka's lawyers alleged the existence of a plot to assassinate him after 15 December 2021, following his transfer to the Peliyagoda police. They further alleged that they were refused to hold confidential consultations with their client.

Previously, concerns about Mr. Madushanka's safety were raised in a motion filed with the Court of Appeal in the course of 2020. The case was reportedly heard on 7 December 2021. According to reports, the Attorney General informed the Court that, in May 2020, the Inspector General of Police expressed a commitment to ensure Mr. Madushanka's safety and that future steps eventually taken in this regard would be brought to the attention of the Court in December 2021.

On 8 December 2021, a lawyer of Mr. Madushanka tried to file a motion with the Colombo Magistrate Court no. 8 in relation to one of the cases where Mr. Madushanka is indicted (case no. 49545/8). The magistrate reportedly did not accept to receive the motion and requested instead that it is filed on a Tuesday, which is the day devoted to hear cases of this kind. The lawyer had

reportedly made oral submissions about the urgency of the matter, highlighting potential risks to his client's life. He was instructed to file a complaint with the police.

Based on the information available, there are serious concerns for Mr. Madushanka's safety, and it is feared that he may be killed imminently, while in custody.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are concerned that, if confirmed, they could amount to a violation of the right to life, protected by Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Sri Lanka in 1980; and of the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment, as set forth in Article 5 of the UDHR, Article 7 of the ICCPR, and Articles 1, 2 and 16 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), ratified by Sri Lanka in 1994.

We recall that persons deprived of their liberty must also be treated with humanity and respect for the inherent dignity of the human person, as set out in Article 10 of the ICCPR, and wish to refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) which provide States with important and detailed guidelines for protecting and fulfilling the human rights of persons deprived of their liberty¹.

We stress that by depriving persons of their liberty, States assume responsibility to care for their life, personal security, bodily integrity and health and have therefore an obligation to take all necessary measures to protect them from any harm². This obligation extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. Based on information available to them, State authorities have a duty of due diligence to pro-actively protect persons in their custody. They may be in violation of Article 6 of the ICCPR even if such threats and situations do not result in loss of loss of life³.

We note that, in her most recent report on promoting reconciliation, accountability and human rights in Sri Lanka, the United Nations High Commissioner for Human Rights expressed concern at a recent series of deaths in custody that occurred in police stations in Sri Lanka, including as a result of torture, and in prisons during attempted escapes or riots and protests linked to fears of COVID-19. According to the report, these incidents reflect the persistence of long-standing and endemic patterns of custodial deaths, torture and other ill-treatment, and extrajudicial

¹ https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf

² See Report of the United Nations High Commissioner for Human Rights, Human Rights in the administration of justice (A/HRC/42/20): https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/20
See Human Rights Committee, General Comment n. 36 (CCPR/C/GC/36): <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGG B%2bWPAXhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBQgqmxPNlJrLLdefuuQjiN19BgOr%2fS93rKPWb CbgoJ4dRgDoh%2fXgwn>

killings by law enforcement officials with impunity⁴.

In reference to this, we emphasize that the duty to protect the right to life requires States to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence⁵.

Accordingly, we respectfully call on Your Excellency's Government **to adequately examine and assess the fears repeatedly expressed by Mr. Madushanka, his family and lawyers for his life and safety and to provide him with the protection he needs in order to prevent or mitigate any risk that he may face, as appropriate.** We stress that failure to do so could engage the State's responsibility for violation of Mr. Madushanka's right to life by virtue of a lack of due diligence on the part of the authorities⁶.

We also call on Your Excellency's Government **to investigate the allegations of death threats against Mr. Madushanka and the feared existence of a plot to assassinate him.** We recall that in situations potentially engaging the life of a detainee and the responsibility of the State, failing to conduct an effective investigation in accordance with relevant international standards, including, as appropriate, the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)⁷, may constitute in itself a violation of the right to life⁸.

Lastly, we call on Your Excellency's Government **to ensure that all persons currently deprived of their liberty in Sri Lanka are effectively protected against violence, death or serious injury; that those responsible of any such act are brought to justice; and that victims and their families have access to adequate remedies and reparation.**

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

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.

⁴ See A/HRC/46/20: <https://undocs.org/A/HRC/46/20>

⁵ CCPR/C/GC/36, op. cit.

⁶ On the considerably higher degree of such due diligence required to prevent deaths in the custodial context, see A/76/264: <https://undocs.org/en/A/76/264>; and A/HRC/42/0/Add.2: <https://undocs.org/en/A/HRC/42/0/Add.2>

⁷ <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

See, *mutatis mutandis*, A/HRC/42/20, op. cit.

2. Please explain what measures have been taken, or are envisaged to be adopted, to protect Mr. Arumahandige Janith Madushanka's life and safety, pursuant to Sri Lanka's international human rights obligations.
3. Please provide information on whether any investigation has been launched into the above-mentioned allegations concerning, in particular, the existence of a plot to assassinate Mr. Madushanka. If no investigation was initiated, or whether it was inconclusive, please explain the reason why and how this is consistent with Sri Lanka's international human rights obligations.
4. Please provide information on the current conditions of detention of Mr. Madushanka, including with regard to the possibility of having confidential contacts with his lawyers, and how these conditions are consistent with the provisions of the Standard Minimum Rules for the Treatment of Prisoners ("The Mandela Rules").
5. Please provide most recent data on instances of violence, death and serious injury in detention, disaggregated by age, ethnicity, gender, sexual orientation, cause of death and type of offence the victim was accused or found guilty of. Please provide information on any investigation undertaken in this connection in 2020 and 2021 and explain whether there has been any measure of accountability, including reparation to victims, as appropriate.

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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While the information at hand is by no means exhaustive, it is sufficiently reliable to indicate a series of inter-related concerns that warrant serious and undivided attention. For this reason, we may consider to publicly express our concerns. We also believe that it is a matter of public interest that these issues are clarified to the full extent possible. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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