

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on minority issues

Ref.: AL LKA 3/2023
(Please use this reference in your reply)

19 April 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 49/5, 51/8, 43/4 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and alleged arbitrary detention of Mr. Sepal Amarasinghe, which appears to be related to the legitimate exercise of his right to freedom of religion or belief and freedom of expression, and the misuse of the International Covenant for Civil and Political Rights Act to punish expressions and behaviours that are considered contemptuous to majority religious feelings.

According to the information received:

Mr. Sepal Amarasinghe is a media activist and popular "YouTuber" in Sri Lanka. In his Youtube channel, Mr. Amarasinghe regularly comments on political and social issues, expressing his beliefs and criticizing what he calls "parochial traditions and customs". He particularly criticizes religious extremism by all faiths. He describes himself as a free-thinker and he is thus critical of the involvement of religion in various aspects of social life.

On 5 January 2023, a debate was held in the Parliament where several of Members of Parliament publicly called for the prosecution of Mr. Amarasinghe due to comments publicly made in which he had allegedly offended the Sacred Tooth relic and the Buddhist religion. The Sacred Tooth relic is a sacred relic venerated by Buddhists held at the Buddhist Temple of the Tooth in Kandy. In a video statement, Mr. Sepal Amarasinghe reportedly called the relic as *labba* – a Sinhala slang for a worthless thing. The term *labba* literally means genitalia but was not used by Mr. Amarasinghe in its literal sense. He was also alleged to have called the tooth relic "kunu datha", which means "dirty tooth". The Minister of Justice conveyed to the Parliament that legal action would be taken against Mr. Amarasinghe and that he would be prosecuted for insulting the majority religion.

A few hours later, on 5 January 2023, at approximately 5.00 pm, seven police officers in civilian clothing believed to belong to the Criminal Investigation Department arrived in an unmarked vehicle and entered Mr. Amarasinghe's house in Colombo without a warrant. After having searched the premises, they took Mr. Amarasinghe into custody and handed over a Receipt on Arrest to his family.

The Receipt for Mr. Amarasinghe's arrest indicated that he had propagated 'religious extremist ideas' and posed a threat to national security and public peace through his expressions.

On 6 January 2023, Mr. Amarasinghe, in the presence of a lawyer, was produced before the Additional Magistrate in Colombo under the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007.

Section 3 (1) of the ICCPR Act states that: "No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Since its enactment, there have been no convictions of individuals inciting to hostility or violence against a religious minority under the ICCPR Act. Reportedly, the Act has been frequently used to protect the majority religion, rather than individuals, and applied to punish acts perceived as blasphemous.

According to section 3 (3), the maximum penalty for that offence is 10 years of "rigorous imprisonment". Section (4) states that "an offence under this section shall be cognizable and non-bailable, and no person suspected or accused of such an offence shall be enlarged on bail, except by the High Court in exceptional circumstances".

The Additional Magistrate remanded Mr. Amarasinghe to Welikada Prison in Colombo and did not consider the application for bail due to the provisions of section 3(4) of the ICCPR Act. Subsequently, Mr. Amarasinghe was produced on several occasions before the Colombo Magistrate Court and remanded for periods of seven or fourteen days.

Mr. Amarasinghe remained in pre-trial detention at the Colombo Remand Prison in Welikadam while being investigated until 21 February 2023. On that day, during a hearing before the Colombo Chief Magistrate, the Senior Deputy Solicitor General appearing on behalf of the Criminal Investigation Department informed the Magistrate that the investigation was ready to be concluded on condition that the defendant provided an apology. Mr. Amarasinghe apologized and subsequently the Colombo Chief Magistrate ordered his release.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the arrest and detention of Mr. Amarasinghe, based on allegations that he expressed views deemed offensive to the majority religion. Should this be confirmed, it would amount to a violation of Mr. Amarasinghe right to freedom of opinion and expression, protected by article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Democratic Socialist Republic of Sri Lanka on 1 June 1980. We are concerned at the application of the ICCPR Act to prosecute expressions and behaviours that are considered as contemptuous to majority religious feelings. Section(3) of the ICCPR Act reproduces the content of art. 20(2) of the ICCPR. We would like to remind that art. 20(2) of the ICCPR does not protect religions per se but aims at protecting individuals and groups targeted on the basis of their identity, including religious or belief minorities, from the advocacy of hatred that constitutes incitement to discrimination, hostility or violence against them. His arrest and detention appears to

be also related to the legitimate exercise of his right to freedom of thought, conscience and religion, enshrined in article 18 of the International Covenant on Civil and Political Rights and as a member of a belief minority under art. 27 of the ICCPR.

In this respect, the arrest or detention as punishment for the peaceful and legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary, including freedom of religion or belief (art. 18) and freedom of opinion and expression (art. 19) (see. CCPR/C/GC/35, paragraph 17).

Should they be confirmed, these allegations would also contravene articles 3 (non-discrimination), 9 (right to liberty and security of person), 14 (fair trial), 26 (equality before the law) and 27 (rights of minorities) of the ICCPR.

According to the report of the Special Rapporteur on freedom of religion or belief after a country visit to Sri Lanka in 2020, “there have been no reported judgments or trials concluded under the International Covenant on Civil and Political Rights Act, while there have been several instances of hate speech and incitement to violence that could have been dealt with under the Act..... The Act has ironically become a repressive tool used for curtailing freedom of thought or opinion, conscience, and religion or belief” (A/HRC/43/48/Add.2, paragraph 72).

The prohibition of displays of lack of respect for a religion or other belief system, including blasphemy laws, is incompatible with art. 18 and 19 of the ICCPR, except in the specific circumstances envisaged in article 20 (2) of the Covenant and as reiterated by the UN Human Rights Committee in paragraph 48 of general comment no. 34. In the present case, the information received does not suggest that Mr. Amarasinghe advocated hatred that constitutes incitement to discrimination, hostility or violence that would justify the restriction of his right to freedom of expression under article 20 of the Covenant.

In addition, we are concerned that procedural weaknesses of section 3(4) of the International Covenant on Civil and Political Rights Act could foster cases of arbitrary arrests and detentions. Section 3(4) makes the offence ‘cognizable’, which means that the offence is capable of being observed and identified by a police officer and an arrest can be made without a judicial warrant, facilitating the arbitrary arrest and detention of an individual without concrete evidence. Such detention can be prolonged, as the offence is non-bailable and the request for bail can be decided only by a High Court judge. That the offence is non bailable is also a concern, as the application of this procedure may allow the detention of someone for the peaceful expression of his opinion. Such detention would thus be arbitrary. Nonetheless, there is no provision in the Act that requires the police to expeditiously produce the suspect before the High Court.

Chapter XV of the Penal Code (art. 290, 290a, 291, 291a, 291b, 292) and section 31 of the Antiquities Ordinance (Antiquities Ordinance, No. 9 of 1940) set out offences that involve insulting a faith group, including through acts directed at objects and sites that are considered sacred by that group. The application of these provisions could result in the criminalisation of expressions on the basis that they outrage the religious feelings of a religious group.

In this regard, Opinion No. 8/2020, which relates to a case in which section (3) of the ICCPR Act and art. 291b of the Penal Code were used to punish expressions

that were perceived to be offensive or insulting to Buddhists, the Working Group considered that those provisions “are so vague and overly broad in their content and application that they could ... result in charges being brought against individuals who had merely exercised their rights under international law. Many forms of legitimate expression and conduct could be considered as amounting to propagation of religious hatred under section 3 (1) of the International Covenant on Civil and Political Rights Act, and the standards of outraging the religious feelings of any class and insulting the religion or religious beliefs of that class, as set out in section 291B of the Penal Code, are inherently subjective”. The Special Rapporteur on freedom of religion or belief noted the lack of clarity and room for misinterpretation of those provisions and recommended their revision to bring them into line with international human rights standards (see A/HRC/43/48/Add.2).

We wish to recall that the repeal of blasphemy laws has been called for by the Special Rapporteur on freedom of religion or belief (see A/72/365) and represents a recommendation of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (para. 17), as well as of the UN Human Rights Committee in its general comment no. 34 (see paragraph 48).

Finally, we are referring your Excellency's Government to the international standards regarding the protection of rights of persons belonging to minorities, in particular article 27 of the ICCPR that guarantees minorities, inter alia, the right to practice and profess their own religion. Persons belonging to such minorities can include atheists and others with non-theistic or non-traditional beliefs (A/75/211, par. 53).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

We are issuing this appeal in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information of the factual and legal grounds for the arrest and detention of Mr. Amarasinghe.
3. Please provide information about the reasons that led to the decision to place Mr. Amarasinghe in pretrial detention as well as reasons and justification of the different orders remanding him into custody.
4. Please explain how the application of section 3 of the ICCPR Act in this case is compatible with articles 18 and 19 of the ICCPR.

5. Please provide information related to the number of trials concluded under section 3 of the ICCPR Act that have led to the conviction of an individual or group of individuals for incitement to discrimination, hostility or violence against members of a religious or belief minority in Sri Lanka.
6. Please explain how articles contained in Chapter XV of the Penal Code and section 31 of the Antiquities Ordinance are compatible with the right to freedom of religion or belief as well as the right to freedom of opinion and expression, as provided for in the UDHR and the ICCPR.

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

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

While awaiting a reply, we urge that steps be taken to address the concerns described in this letter to bring penal legislation in consistence with Sri Lanka's international human rights obligations under ICCPR, so as to prevent the re-occurrence of such instances of arrest and detention for acts which are protected under international law.

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

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We refer to the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the Democratic Socialist Republic of Sri Lanka on 11 Jun 1980, and, in particular to article 18 of the ICCPR stresses that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." Article 18, paragraph 3 of the ICCPR also emphasises the "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

The Human Rights Committee in its paragraph 3 of general comment no. 22 on freedom of thought, conscience and religion states that "article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice". In paragraph 5, the Human Rights Committee observes that the "freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views". The Human Rights Committee also noted that the fact that a religion is recognized as a State religion or that it is established as official or traditional shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including article 18 (paragraph 9). The right to freedom of thought, conscience and religion in article 18 (1) of the Covenant encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others (paragraph 1).

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) states in its article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter".

Article 19 of the ICCPR protects the right to freedom of opinion and expression. Whereas the right to freedom of opinion in article 19(1) is absolute, the right to freedom of expression in 19(2) is subject to certain restrictions based on the requirements in article 19 (3), which are narrowly tailored and have narrow

application. The scope of art. 19 (2) is broad. It protects the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. The scope of paragraph 2 embraces even expression that may be regarded as offensive (CCPR/C/GC/34 para. 11). It protects all forms of expression and the means of their dissemination, including “spoken, written and sign language and such non-verbal expression as images and objects of art. [...] They include all forms of audio-visual as well as electronic and internet-based modes of expression.”¹ Any restrictions on the right to freedom of expression must be compatible with the requirements of article 19(3). The State must demonstrate that any restrictions with article 19 (2) is compatible with the requirements of article 19 (3), as well as the principles of non-discrimination in article 26.² All restrictions must therefore serve one of the legitimate aims exhaustively enumerated in the provision, be provided by law, and be necessary and proportionate.

We also want to remind your Excellency’s government of ICCPR articles 6 and 9 enshrining the right to life and the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. 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 state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Furthermore, in its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of peaceful assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention. It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

Furthermore, article 27 of the ICCPR provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human

¹ [CCPR/C/GC/34](#), paragraph 12.

² [CCPR/C/GC/34](#), paragraphs 27 and 35.

rights without discrimination and in full equality before the law (article 4.1).