

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief**

Ref.: AL

LKA 5/2023  
(Please use this reference in your reply)

26 June 2023

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 51/8, 46/9, 52/9 and 49/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arrest and arbitrary detention of a stand-up comedian and social activist, Ms. Nathasha Edirisooriya, which appears to be related to the exercise of her right to freedom of artistic expression and the misapplication of the International Covenant for Civil and Political Rights Act No. 56 of 2007. We have expressed our concerns about the misuse of the abovementioned law to punish individuals in connection with opinions and behaviours deemed offensive to religious feelings in a previous communication (LKA 3/2023). We take note of the intention expressed by your Excellency's Government to reply to that communication by 4 July 2023, as expressed in [your letter](#) of 15 June 2023.

According to the information received:

Ms. Edirisooriya is an independent artist, one of the few practising women stand-up comedians in Sri Lanka producing content in Sinhala. She has actively created and defined a space for herself as a feminist who addresses issues of gender, sex, chauvinism and misogyny, moral and religious values, education, family life and mental health through her stand-up comedy. She actively integrates into her stand up content the insights she gains through her research as a human rights defender active in the areas of social development, gender, and women's rights. While working in these areas, Ms. Edirisooriya identified a gap in the interaction between the research and ground realities. She chose to fill this gap by turning to self-reflective performance and storytelling and chose stand-up comedy as a tool to analyse and communicate important issues to large groups of people effectively. She uses humour as an effective way of bringing people together to discuss what she considers sensitive and taboo subjects.

On 1 April 2023, Ms. Edirisooriya performed a stand-up routine at a show called 'Modabhimanya' (Fool's pride) organised by [REDACTED]

██████████ Her routine was called ‘Haiya’ and highlighted the insecurities and pressures that parents pass on to their children. In the show, she discussed several themes including sex, morality, and religious values.

On 23 May 2023, ██████ released a video of the stand-up routine as marketing material for another comedy show scheduled on 27 May 2023. Ms. Edirisooriya also published the same video on her YouTube channel.

On 24 May 2023, Ms. Edirisooriya began to be attacked on social media for allegedly insulting Buddhism. She was threatened with physical and sexual violence, including being attacked with acid, stripping, rape, gang rape, and being beaten, burnt, and killed. Some of the attacks spread disinformation that she is Christian, when in fact, Ms. Edirisooriya comes from a Buddhist background, while the information is in any event immaterial to respect of her rights. Moreover, details of Ms. Edirisooriya’s residential address were posted online by ██████████, a known conservative militant, encouraging others to commit acts of violence against Ms. Edirisooriya. Authorities did not investigate the threats she received.

On 24 May 2023, ██████ published online a recorded public apology, which featured Ms. Edirisooriya’s apologising for posting her performance on her YouTube channel. She also stated that she had no intention of insulting Buddhism or any religion. She thereafter removed the video of her performance.

Despite the apology, online attacks against Ms. Edirisooriya continued, and a receipt of a police complaint against Ms. Edirisooriya, filed by a Buddhist monk, dated 27 May 2023, was shared online.

On 27 May 2023, Ms. Edirisooriya was detained by immigration officials at the Bandaranaike International Airport while she and her partner sought to depart for family reasons. No arrest warrant was produced. Immigration officials only informed Ms. Edirisooriya that there was a travel ban against her, and that the Criminal Investigation Department of Sri Lanka (CID) had requested that she be detained until they arrive. Ms. Edirisooriya was subsequently taken into custody by the CID and transferred to the CID headquarters in Colombo.

On the morning of 28 May 2023, the CID initially refused Ms. Edirisooriya access to her lawyers or her partner. When access was subsequently granted, her partner was asked to handover Ms. Edirisooriya’s phone, which was examined by the CID in his presence and returned. In the evening of 28 May 2023, Ms. Edirisooriya was taken by the CID to her residence for an inspection following which several joke books with her notes were seized from her home. On the same day, Ms. Edirisooriya was produced before the Colombo Fort Magistrate. At the hearing, the CID informed the Magistrate that Ms. Edirisooriya was arrested under section 3 of the International Covenant on Civil and Political Rights Act of 2007, which prohibits the advocacy of national, racial or religious hatred that constitutes incitement to

discrimination, hostility or violence. Ms. Edirisooriya was accused of insulting Buddhism and committing an offence under that law during her performance of the stand-up comedy routine of 1 April 2023 to a live audience. The CID claimed that several persons, including the Commissioner of Buddhist Affairs and a number of Buddhist monks, had made complaints against Ms. Edirisooriya.

At the hearing before the Colombo Fort Magistrate, Ms. Edirisooriya's lawyer made an application for bail. However, the Magistrate denied the application and placed her in remand custody at the Colombo Remand Prison until 7 June 2023. On 7 June, she was produced again before the Colombo Fort Magistrate and remanded to custody. Ms. Edirisooriya currently remains in detention to allow investigations into the alleged violations of section 3 of the International Covenant International Covenant on Civil and Political Rights Act of 2007.

The offences under section 3 of the International Covenant International Covenant on Civil and Political Rights Act of 2007 alleged by the CID are specifically related to two jokes that Ms. Edirisooriya delivered during her routine.

Firstly, Ms. Edirisooriya reflected on the competitiveness of modern-day parenting, and on how Sri Lankan parents constantly compare their children with other children. To demonstrate the point, she imagined how this approach may have played out in the era of the Lord Buddha, when he was a young prince or a small child. She jokingly asked the audience to imagine the pressure on the children who grew up with young Siddhartha when the rumours about his achievements as a child began to spread. She then acted out a scene where a contemporaneous (imaginary) parent compares their own children to the Lord Buddha when he was a child (referred to as 'Sudhodhana's child').

Second, Ms. Edirisooriya reflected on her own experience at a Buddhist all-girls school, and on how the emphasis on maintaining and protecting chastity in her school (and other schools like hers) has turned these schools into 'virgin factories'. She then went on to suggest, in jest, that when violent Islamist terrorists commit suicide expecting to be rewarded with 72 virgins in heaven, the majority of these virgins must surely come from schools like the one she attended.

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 Ms. Edirisooriya, based on allegations that she expressed views deemed offensive to the majority religion. Should this be confirmed, it would amount to a violation of Ms. Edirisooriya right to freedom of opinion and expression, including artistic expression, protected by article 19 of the International Covenant on Civil and Political Rights (ICCPR) and by article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), both ratified by the Democratic Socialist Republic of Sri Lanka on 1 June 1980. They would also contravene articles 3 (non-discrimination), 9 (right to liberty and security of person), 14 (fair trial) and 26 (equality before the law) of the ICCPR.

We would like to refer your Excellency's Government to General Comment No 34 paragraph 48 of the Human Rights Committee that states "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant". Section 3 of the International Covenant on Civil and Political Rights Act of 2007 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. In the present case, the information received does not suggest that Mr. Edirisooriva advocated hatred that constitutes incitement to discrimination, hostility or violence that would justify the restriction of her right to freedom of expression under article 20 of the Covenant.

The Special Rapporteur on freedom of religion or belief, in her report about the country visit to Sri Lanka in 2020, highlighted that "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).

As previously indicated to your Excellency's Government (see LKA 3/2023), 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 as 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.

We are concerned that the arrest of Ms. Edirisooriya to punish expressions deemed blasphemous or offensive to religious feelings could undermine freedom of expression in the country, including in the form of art, and foster the shrinking of the civic space by inducing phenomena of self-censorship by artists, journalists or any other individuals who intend to convey their opinion about religious issues in the country.

We are also concerned that the threats received online by Ms. Edirisooriya have not been publicly condemned, investigated nor punished by the authorities.

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 Ms. Edirisooriya.
3. Please explain how the application of section 3 of the ICCPR Act of 2007 in this case is compatible with the right to freedom of expression, including artistic expression, enshrined by article 19 of the ICCPR.
4. Please provide information about steps taken to investigate the violent threats received online by Ms. Edirisooriya, bring responsible to justice and ensure the protection of Ms. Edirisooriya from any act of violence in the context of the threats received. Please provide information on the measures the authorities intend to take to investigate and punish the authors of the threats and those who advocated religious hatred and incited violence against Ms. Edirisooriya under section 3 of the International Covenant on Civil and Political Rights Act of 2007.
5. Please provide information concerning all completed trials that resulted in the conviction of an individual or group of individuals for incitement to discrimination, hostility or violence against members of a religious or belief minority, pursuant to article 3 of the International Covenant on Civil and Political Rights Act.

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.

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.

Further, 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 allegation letter and the regular procedure.

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

Matthew Gillett  
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Alexandra Xanthaki  
Special Rapporteur in the field of cultural rights

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

Nazila Ghanea  
Special Rapporteur on freedom of religion or belief

## **Annex**

### **Reference to international human rights law**

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

In this regard, we would like to refer your Excellency's Government to articles 9, 10, 14, 18, 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR), which respectively ensure the right to liberty and security of a person and against arbitrary arrest or detention, humane treatment, the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law, the right to freedom of expression and the right to hold opinions without interference.

Article 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. According to article 9(3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

In connection with above alleged facts and concerns, we remind your Excellency's Government of article 14 (1) of the ICCPR, which provides that under international law all individuals are equal before the law, and everyone has the right to a fair, free and public trial before an independent and impartial tribunal. We draw your attention to article 14 (2) that all persons are presumed innocent until proven guilty according to law, article 14.2 (c) that all persons shall be tried without undue delay, (d) all persons tried must be present and permitted to defend themselves in person or through legal assistance of their own choosing; (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on her behalf under the same conditions as witnesses against her; and (f) not to be compelled to testify against herself or to confess guilt.

We would like to refer your Excellency's Government to General Comment No 35 of the Human Rights Committee, which 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 (article 19), freedom of assembly (article 21), freedom of association (article 22) and freedom of religion (article 18). The Human Rights Committee has further stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is in principle arbitrary. The Working Group on Arbitrary Detention has also confirmed this in its jurisprudence.

Moreover, article 18 (1) of the ICCPR stresses "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 this 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”.

We would like to remind your Excellency's Government of its obligations as a Member Party of the ICCPR to uphold freedom of expression, including the right of artists to express their views and opinions. 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 opinion and expression (art. 19) (see. CCPR/C/GC/35, paragraph 17). Under this article, States have an obligation to secure the enjoyment of the right to freedom of opinion and expression, which is one of the essential foundations of a democratic society. Any restriction on the rights enshrined in article 19 (2) must be compatible with the requirements in article 19 (3). The scope of the right to freedom of expression includes even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19 (3), CCPR/C/GC/34 para. 11. However, it is not compatible with art. 19 (3), for instance, to invoke laws protecting national security or otherwise, in order to suppress or withhold from the public information of legitimate public interest that does not harm national security or use such laws to prosecute journalists, artists or human rights defenders for having disseminated such

information, *id.* para. 30. As indicated by the Human Rights Committee, under no circumstance can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest [...] be compatible with article 19”, *id.* para. 23.

We would like to stress that, as stated by the Human Rights Committee, laws limiting the right to freedom of expression must themselves be compatible with the ICCPR (CCPR/C/GC/34). We stress that the protection of religion itself does not and therefore cannot be used to limit the right to freedom of expression, including through art. International human rights law protects individuals from intolerance and violence based on their religion or belief, but it does not protect the religion or belief itself. Criminalization of blasphemy is incompatible with the ICCPR. Furthermore, it is incompatible with article 19 to prevent or punish commentary on religious doctrine or tenets of faith.

We would also like to refer your Excellency’s Government to article 20 (2) of the ICCPR that states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. We want to stress that this article should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful association, and assembly. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offence.

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). We would like to recall the “Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (A/HRC/22/17/Add.4). It clarifies State obligations and other stakeholders’ responsibilities under articles 19 and 20 of the ICCPR and sets out a framework of measures via the implementation of legislation, jurisprudence and policies to combat activities that constitute incitement to violence and discrimination on multiple grounds, including religion.

We would like to refer your Excellency’s Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), which y the Democratic Socialist Republic of Sri Lanka ratified on 1 June 1980, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have also undertaken to respect inter alia the freedom indispensable for creative activity. The Special Rapporteur in the field of cultural rights stresses that all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-

discourse to dominant powers, and to express their own belief and world vision (A/HRC/23/34, paras. 85 and 89 d).

States have the challenge of ensuring the full implementation of artistic freedoms and resort to limitations only when absolutely necessary (A/HRC/23/34, paras. 3 and 32). Regarding the imposition of sanctions, including criminal sanctions, deprivation of liberty and the closing of public space, we would like to recall the recommendations made by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur in the field of cultural rights to distinguish between a) expression that constitutes a criminal offence; (b) expression that is not criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations, such as when issuing specific violent threats or inciting others to commit violence against specific persons.

In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the Rabat Plan of Action, to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4). We also refer your Excellency's Government to the Research report on artistic freedom of expression of the Special Rapporteur on freedom of opinion and expression (A/HRC/44/49/Add.2), which clarifies the conditions that should be met to limit artistic expression in compliance with international human rights norms and standards.