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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 16/4, 24/5, 16/5, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding death threats made against **Ms. Nimalka Fernando** via a State-run media outlet.

Ms. Nimalka Fernando is a women's rights activist and human rights lawyer. She is a member of the Democratic People's Movement, as well as president of the International Movement Against all Forms of Discrimination and Racism (IMADR), and the Women's Forum for Peace in Sri Lanka. She was a founding member of the Asian Regional Exchange for New Alternatives (ARENA). The Democratic People's Movement is a coalition of non-governmental organizations (NGOs), trade unions and grassroots organizations which initiate action and dialogue for development.

The Sri Lanka Broadcasting Corporation (SLBC) is a public broadcasting service which broadcasts six regular radio programme channels on a nationwide basis. Those six channels are the Sinhala National Service, the Tamil National Service, the English National Service, City FM (Sinhala), the Sinhala Commercial Service and the Tamil Commercial Service.

According to the information received:

On 3 November 2013, the Hard Talk segment of the daily news bulletin of Hiru TV broadcasted a voice recording made by Ms. Nimalka Fernando, where she spoke of the need for protection of sex workers from harassment and called for a better protection of sexual and reproductive health rights in Sri Lanka.

On 4 November 2013, this segment was broadcast on a radio programme which was titled “Stoning the Sinner Woman” on the commercial channel of the Sri Lanka Broadcasting Corporation (SLBC). Reportedly, the programme broadcasted telephone calls which made threats to the life of Ms. Nimalka Fernando. Examples of the alleged threats which were broadcast on air are as follows:

“We cannot allow persons like Nimalka Fernando to live in this society”

“If we do something to them the Government will be blamed by the human rights people. We should use a lorry and cause an accident”

“There is something called cleaning in the army....We should hand her over to the cleaning system”.

Reportedly, Ms. Nimalka Fernando’s character was also called into disrepute, with one caller referring to her as a prostitute. It is alleged that at least three of the callers identified themselves as retired army personnel. It is further alleged that the two presenters of the radio show not only permitted, but actively encouraged and endorsed the ideas expressed during the programme.

Grave concern is expressed at the nature of the threats being made against Ms. Nimalka Fernando, especially given the fact that they may be directly related to her peaceful and legitimate human rights work. Further serious concern is expressed at the fact that some of the threats were made by self-identified army personnel, and that such threats of serious violence were broadcasted, and even encouraged, by a State broadcasting service.

While we do not wish to prejudge the accuracy of these allegations, we wish to refer your Excellency’s Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Democratic Socialist Republic of Sri Lanka on 11 June 1980, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would also like to refer your Excellency’s Government to article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Regarding the allegations received indicating that the perpetrators of the violations reported are non-State actors, we would like to call to the attention of your Excellency's Government the Human Rights Council Resolution A/HRC/RES/13/13 of 15 April 2010, which recognizes "the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence, and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all" as well as to adopt the necessary measures to prevent such acts. In this Resolution the Human Rights Council also "urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity".

Furthermore, the Special Rapporteur on the situation of human rights defenders, in paragraphs 28 and 29 of her report to the General Assembly A/65/223 of 4 August 2010, stated that "the responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfil human rights, including those of human rights defenders. (...)" The Special Rapporteur argued that the State's obligation to protect "first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State's responsibility. Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment."

With regard to the death threats received by Ms. Nimalka Fernando, we would like to remind your Excellency's Government that every human being has the inherent right to life and no one shall be arbitrarily deprived of his or her life, in accordance with article 6(1) of the ICCPR. In this regard, we would like to refer to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65, according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

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 Ms. Nimalka Fernando in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that Ms. Nimalka Fernando receives the security and protection measures required to ensure her physical and psychological integrity in light of the threats made against her.
4. Please provide the details, and where available the results, of any investigation or inquiries which may have been carried out in relation to this case.
5. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 protect the life and security of Ms. Nimalka Fernando, as well as guarantee that the rights and freedoms of Ms. Nimalka Fernando are respected. 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.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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